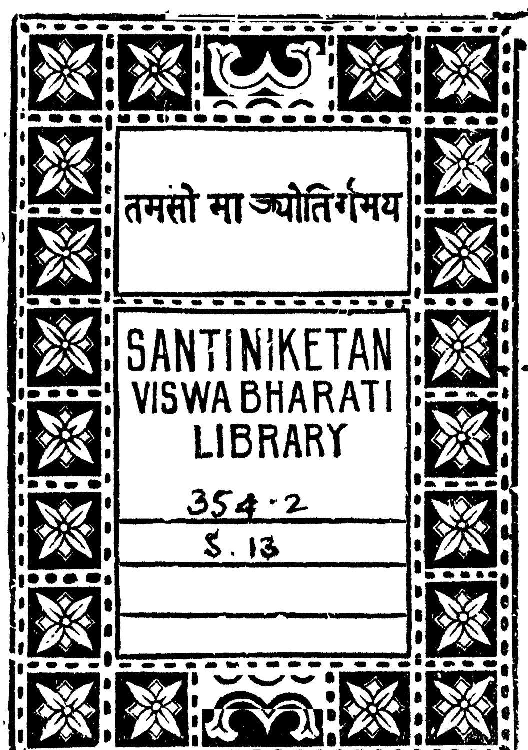


THE INDIAN FEDERATION

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AN EXPOSITION AND CRITICAL REVIEW

BY

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PREFACE

THE purpose of this book is to assist the study of the Government of India Act, 1935. The part of the original measure relating to Burma does not come into my survey, for it was detached from the major portion by a Reprinting Act, which also corrected certain minor drafting errors in both of the enactments. While I have not attempted to describe in detail the various forces which have brought the constitutional changes provided for by the Government of India Act, I have deemed it necessary to elucidate in the introductory chapter some of the important movements.which have deeply influenced Indian affairs since 1919, for without some such analysis it would be difficult for the reader to grasp all the implications of the measure.

My comments on the manifold provisions of the Act are intended to trace the evolution of particular sections and should not be regarded as a commentary on the legal aspects of the subject. I write as a layman in legal knowledge, but one who was privileged to play a part in the negotiations and discussions which are described. Any information given is based on published data, and I have not drawn upon confidential documents or secret information. The time for writing the inner history of eight years of constitution-making from 1927 to 1935 is still far off.

My obligations to the Report of the Parliamentary Joint Select Committee are apparent in every part of the book. I have differed on numerous points from the views of the majority, but this does not lessen my sense of the value of an historic State document in which the Indian constitutional problem is analysed with so much lucidity. The process of finishing the framework of the new Constitution by Orders in Council, after the consideration of Drafts by Parliament, is still incomplete. Every endeavour has been made to give, in the Appendices, Orders in their final form. In Appendix X, for instance, the Draft Instrument of Instructions to Governors laid before Parliament at the opening of the 1936-37 Session in November 1936 is reproduced.

While the responsibility for opinions expressed is solely mine,

I acknowledge with gratitude the kind help and encouragement received in the preparation of this book from a number of friends. I should be singularly ungrateful if I did not mention the active interest taken in the work from its inception, and the many valuable suggestions made, by Mr F. H. Brown, C.I.E. I warmly appreciate the skill and judgment with which, in spite of many other claims upon his energies, and as an act of long friendship, he went through the first proofs from the printers. I am fully sensible of my many shortcomings for a task of this magnitude, and how much I owe to him in helping to overcome them.

I can at least claim, however, that I have tried to discuss the new Indian constitutional structure in an objective spirit. I have done so in the earnest hope that the book will promote a clearer understanding between the two countries who are partners in this great enterprise and among the different communities in India. It is with diffidence and hesitation I have written on points round which there have been fierce controversies, but I have been sustained by the conviction that, in respect to these passages as to the book in general, readers will overlook my shortcomings and treat them with indulgence.

SHAFA'AT AHMAD KHAN

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INTRODUCTION

Modern Indian nationalism is the product of Western education and Western ideas. Traces of the old and haughty spirit of defiance and independence which had found grotesque expression in the Indian Mutiny of 1857–58 still lingered in certain nooks and corners of the land, but the pride of race had bowed before the march of irresistible power, and the virile Rohilla, the sturdy Maharatta and the chivalrous Rajput sat down with a forced and pathetic contentment to a peaceable and tranquil life of inactivity and ease.

Decay of the Old Aristocracy.—The old aristocracy still retained much of its influence and prestige, and the respect and affection which the masses showed for scions of noble families was varied by surprise and astonishment at the extravagance and illiteracy of some of the scions of a brilliant race. The old aristocracy lost its influence, and a new aristocracy now appeared on the scene, an aristocracy distinguished by intellectual ability and gifted with all the qualities of character which made it almost irresistible in the sphere in which it moved. It had in most cases a humble, but not an ignoble, origin, and its capacity for adaptation, its flexibility, the energy and enthusiasm with which it carried on the task of administration under the close supervision of English officers soon made it an indispensable element in the complicated administrative machinery which British administrators evolved after a century of trial and error.

The aristocracy of office, or bureaucracy, has ruled India for nearly a century. It is true that the Moghul rulers had built up many institutions which have survived to the present day. Then administration reached a level of efficiency and was infused with an energy and vigour which aroused the admiration of their contemporaries. It was, no doubt, crude and simple as judged by modern standards, was overlaid with ceremonialism and ultimately degenerated into Byzantism, and became effete and lifeless in the eighteenth century. Yet in its first full blossom it started flowerlike from the soil, fragrant in its first expansion beneath the sun of

courtesy and culture. The Indian and British aristocracy of office which succeeded the Moghul administration has been only slowly evolved, but it has now reached the stage of maturity and is equipped with all the resources which fine traditions, unbroken success and unquestioned integrity confer. Without it the administration would topple down like a house of cards. With its help it can become a striking success. It has not merely administered but governed the country.

In the new Constitution its position will be different. The Indian Ministers will direct the policy and its execution will be left to the administration. In my opinion, instead of weakening its position the new measure will greatly strengthen it and will have greater real power and influence than it has ever exercised before.

Work of Indo-English Bureaucracy.—The Indo-English aristocracy which has ruled India from 1858 onwards has met with a success which is without a parallel in any other country. The rulers were inspired by the noblest traditions of their race and came of a stock which had produced leaders in almost every sphere of life in England. Before the days of competition, Dundas had managed, at the end of the eighteenth century, to send many an impecunious younger son of noble Scotch families to India, while Castlereagh had given opportunities to many youths of Protestant Ulster. The arrangements for admission to the Indian Civil Service brought in the cream of the English middle class to positions of trust and responsibility in India. Among the Indians the products of Indian universities acquitted themselves creditably in the undefined positions in which they found themselves. They could not rise above the level of a deputy collector, and no Indian then could dream of acting as a collector of a district. Their status, emoluments and prestige were immeasurably inferior when compared with the special privileges accorded to European officials, yet in those days these posts carried great prestige. The holders were deemed by their Indian fellow-subjects to be dispensers of unlimited power and undefined patronage and were regarded as the eyes and ears of the *sirkar*.

The number of non-officials who built and maintained solid influence was infinitesimal, as deliberative bodies, whether local or provincial or central, were few and were dominated by officials; in fact, government *was* administration, and the brilliant men who

guided the destiny of the land with a curious mixture of superb tact and benevolent despotism worked the machine with a freedom and independence which must be a source of envy and admiration to many of their successors. These proud and haughty administrators did not hesitate to fight even Governors-General in meetings of the Executive Council, and their authority remained unimpaired till the eve of the Reform Act of 1919. Indians were excluded from many important offices, and carried on the even tenor of their existence with the curious impassivity and resignation which were the result of the Mutiny. The country was outwardly calm and contented, and her progress, though painfully slow, was steady and uniform.

Genesis of Indian Nationalism.—The post-Mutiny period was a period of intense preparation and in it were laid the foundation of Indian nationalism on principles which have withstood the severest test of time and experience. Slowly and steadily a new generation was receiving education in our schools and colleges which was destined to make its mark at the end of the last century, and carried on its work to the beginning of the Montagu-Chelmsford reforms in 1919. Indian nationalism owes its inspiration to a select band of enlightened Englishmen, whose encouragement and help to Indian leaders of the day resulted in the foundation of the Indian National Congress in 1885. Men like A. O. Hume, George Yule, Sir Henry Cotton, and Sir William Wedderburn carried on the noble traditions of Wilberforce, Clarkson, Bright and Zachary Macaulay, and imparted to the movement an amount of energy, enthusiasm and vigour without which it would have been impossible for the new body to survive. The men who guided its councils and formulated its policy were sustained in their labour by sound common sense and practical experience of life. Their idealism was tempered and mellowed by experience, and the first President, Mr. W. C. Bonnerjea, assured the Government that there were no "more thoroughly loyal and consistent well-wishers of the British Government than were himself and the friends round him. Much had been done by Great Britain for the benefit of India, and the whole country was truly grateful to her for it. She had given them order, she had given them railways, and, above all, she had given them the inestimable blessings of Western education. But a great deal still remained to be done. The more progress the people made in

education and material prosperity, the greater would be their insight into political matters and the keener their desire for political advancement."

Mr. Dadabhai Naoroji.—His successor, Mr. Dadabhai Naoroji, was no whit behind Mr. Bonnerjea in his protestations of loyalty: "And we have to acknowledge so many blessings as flowing from the British rule—and I could descant on them for hours, because it would simply be repeating to you the history of the British Empire in India. Is it possible that an assembly like this, every one of whose members is fully impressed with the knowledge of these blessings, could meet for any purpose inimical to that rule to which we owe so much? The thing is absurd. Let us speak like men and proclaim that we are loyal to the backbone; that we understand these benefits English rule has conferred upon us; that we thoroughly appreciate the education that has been given to us, the new light which has been poured upon us, turning us from darkness into light and giving us the new lesson that kings are made for the people, not people for their kings; and this new lesson we have learnt amidst the darkness of Asiatic despotism only by the light of free English civilisation" (Presidential Address to the Indian National Congress, 1886). The early leaders of the Congress were men of vision and imagination and were inspired by lofty patriotism. Their intellectual equipment, the breadth, depth and width of their statesmanship, their ecstatic fervour for our motherland, have hardly been surpassed. They were idealists, but they combined a sense of realism, a feeling for essentials, in an eminently practical and sensible programme. If they could not achieve their goal in one year, they repeated it in the succeeding years, and were never satisfied until the substantial increments of their policy and the practical application of their principles were realised in measures which assumed concrete shape and form in definite stages. They avoided the barren and futile task of political ideology, metaphysical abstractions and Hegelian or Marxian dialectic, and concentrated on the real and the practical. Their advice and guidance in the years 1885–1919 steered India clear of the Scylla of Byzantine bureaucracy and appalling stagnation and the Charybdis of Communism, anarchy and confusion.

The old Congress Programme.—The Congress programme was one of dynamic progress. It aimed at social and political growth, satis-

fying and regulating the organic functions of a nation that had just begun to rediscover her lost glories and the grace, charm and splendour of her magnificent culture, and had attained self-consciousness within a period which astonished all keen students of the movement. It represented the solid basis of national morality which grounds a policy and a programme firm upon sympathies, interests and traditions of the people, and is the final outcome of a slow and deliberate accretion in the stages which they had traversed. Only the light cast by subsequent events upon their early history enables one to see the greatness of their achievement and solidity of their foundation. They advanced from a stage of political infancy to the highly developed conception of a national state, enjoying complete equality with other members of the British Commonwealth of nations, centralising the national forces of India and at the same time giving free play to provincial energies and provincial patriotism. Very few will hold that the work of these giants, who toiled and laboured incessantly for India, has been fruitless or barren. On the contrary, there are few men who can withhold their meed of praise from men like Dadabhai Naoroji, Bal Gangadhar Tilak, Gokhale and Surendranath Banerji. We see in their policy neither the climax of conflicting humours nor the splendid cancers and imposthumes of a desperate disease, but the majestic self-confidence and gnomic wisdom of statesmen. Their leadership saved India, and their single-minded devotion is a priceless heir-loom to the present generation.

Congress on the Warpath.—When the Indian National Congress was cast adrift from its moorings and embarked on the turbid ocean of non-cooperation, it snapped the ties that had united an enthusiastic band of Englishmen, isolated India from the rest of the world and involved her in a hopeless fight against constitutional government. The non-cooperation movements of the years 1920–23 and 1930–31 did undoubtedly rouse the masses from their pathetic contentment and sluggish resignation. They gave an impetus to the women's movement in India, and created a feeling of freedom and self-respect which are the foundation of our national growth. But these benefits were purchased at a heavy cost, and the rich resources of Congress leadership, character, ability, their self-sacrifice and devotion to the motherland were dissipated in Gargantuan schemes and impossible undertakings. While it would be idle to deny the

reality of some moral gain to India from the cumulative efforts of some of the greatest leaders whom the Congress has produced since 1920, it would be useless to contend that the programme which the Congress adopted in 1920 has succeeded. It has been assuredly a failure, and the pendulum has now attained equilibrium. The Congress has at last, after nearly sixteen years, become reconciled to constitutional methods. The non-cooperation movement threw the country into a state of excitement and confusion which is without a parallel in the history of this land. Many government institutions seemed to totter and fall, but the ground beneath this specious fabric rung hollow, and the administration ultimately emerged triumphant. The movement represented a transient political necessity, and was the result of post-war neuroses which had not been properly diagnosed in 1920. The attempts of the Moderates to work the reforms of 1919 were only partially successful, as financial stringency, the inherent defects of the diarchical system and personal equation prevented large and comprehensive measures being passed.

Work of the Provinces: Madras and the Punjab.—Some provinces, such as Madras and the Punjab, showed striking and substantial achievements. Education was reorganised; medical relief was extended; agriculture was developed and the people were gradually prepared to appreciate the benefits of the new system. Rural classes became self-conscious and some very useful measures were passed for the development of these areas. In Madras the reforming activities of the non-Brahmin Ministry inevitably produced friction, but the vigour of the Chief Minister, the Raja of Panagal, overcame all obstacles and the party system was developed on a firm and stable basis. In the Punjab Sir Fazli Husain showed consummate ability and matchless energy and inaugurated an era of educational revival which vivified the province. Bengal gave promise of fruitful endeavour and the doyen of Bengal, Sir Surendranath Banerji, threw himself with characteristic vigour and pertinacity into the political arena. The end of 1923 saw the disappearance of most of the Liberal Ministries, and their place was taken by nondescript Ministers and parties whose majority in the Legislatures could scarcely conceal their lack of driving power and initiative. There were exceptions in certain provinces, but it is safe to say that the later years were devoid, in the broad sense of the term, of any

important or striking achievements in the political or economic sphere. The preoccupation of the best minds of the country in the Round Table Conference on the one hand, and civil disobedience on the other, left the field clear for weak and vacillating Ministries. Some provinces, such as the Punjab and the United Provinces, continued to show a steady and uniform level of progress which contrasted strangely with the somnolence and lethargy of others.

Pandit Motilal Nehru's Work in the Assembly.—The Central Legislature had started its work in 1921 amidst the happiest auspices and had acquitted itself creditably at a time of abnormal excitement. The entry of Swarajists in 1924 made the Assembly an influential and representative body. It became the focus of our national life and thought, and soon built up a position which it has consistently maintained. It mobilised Indian opinion and guided the political movement in India with sure and certain footsteps. The presence of men like Mr. Jinnah, Pandit Motilal Nehru, Mr. Patel and others riveted the attention of the whole of India, and Indians followed its proceedings closely and with deep interest. The new Assembly included members of Congress Swarajists, who were the largest single party in the House, and to them were joined some progressive groups such as Mr. Jinnah's Independent party and a few others.

There is an old Greek proverb that "to desire the impossible is a malady of the soul". With this malady in its most incurable form many leaders of Indian Nationalism were stricken, and instead of seeking cure they nursed their sickness and delighted in the discord of spirit. From the discord they wrought unity and integrity and vigour of their programme. At certain stages their patriotism was tranquillised to a sublimer music and the element of discord had passed out of it, and it grew in purity and power. The sensual alloy was purged from the vivid passion, and the movement assumed a semi-spiritual and cultural character which made it one of the most powerful factors in the evolution of Indian thought. In its political aspects civil disobedience had been destitute of constructive statesmanship, devoid of a positive programme and tended to undermine stability and security.

Varieties of Indian Nationalism: its Emotional Background.—Indian Nationalism was not and is not the prerogative of any one

organisation. It has permeated our entire national life and thought and has produced a variety of schools and doctrines which have not yet been adequately analysed. Nationalism here is used in its broader aspect, and denotes different shades of opinion which merge in a progressive, hopeful outlook on the future of our country. With some, Nationalism became merely a mood of the imagination, a delicate disease, a cherished wound, to which they constantly recurred as the most sensitive and lively well-spring of a poetic fancy, while others shaped a conception of India which left the nineteenth century behind. From their lips we hear for the first time the passionate cry of *Bharat Mata* (Dear Mother) and the true conception of India is formed; an India united and solidified by her culture and tradition; one and indivisible despite her petty domestic squabbles. The real and indestructible unity of the nation in a spirit destined to dominate the future programme of this vast sub-continent suddenly comes to consciousness, and the vision of India unfolds for this school a universe which is more actual and real, more steeped in pure emotion, more stimulative of sublime aspirations and virile purpose than ambitious programmes designed to sécure a feeble and degenerate type of Communism and "independence". It seems as if the true self of India has been revealed, and the ideal is not a phantom but a reality. This analysis of the emotional background of the Nationalist movement is necessary at the present time, as it has hitherto been confused with the crude manifestation of primitive passion in periods of turgid eloquence and appalling excitement. The ideas and emotions, the imagination and action of leaders of Indian revival who ploughed their lonely furrow in the nineteenth century will be inexplicable to us unless we project ourselves into the atmosphere which they breathed and visualise the obloquy and suspicion which they endured. They held their heart bare to the world, and every man who had a heart might understand their language. Between the subject-matter and the verbal expression there lay no veil of speculative doubting or verbal gymnastics. Their object being progressive realisation of self-government for India, the form of their resolutions becomes more clear and perfect, more harmonious in its proportions, more immediate in its political effects. Their utterance was direct and limpid, and they were as practical as any commercial traveller. The non-cooperation movement introduced a new programme and a

new technique. The programme lacked coherence and clarity, and was grounded upon passion and prejudice. Considered strictly from a constitutional aspect its effects were negligible. Nor can we overlook the other effects of the movement. It created a cleavage in the Nationalist and progressive ranks, and greatly weakened the forces that had been welded together since 1885. No impartial man can resist the conclusion that the division of progressive forces in the country at a critical period of our national development seriously affected the character of our demand for Dominion status.

Effects of Non-cooperation.—Had the domestic issues between the Congress and other political parties in India been confined within proper limits and had political India organised itself on a unified programme of constitutional reforms, her progress since the Act of 1919 would have been strikingly, nay dazzlingly, rapid, and she could legitimately expect a measure in 1935 that would represent her substantial achievements in economic organisation, cultural development, and political renaissance. But she lost that opportunity mainly because one section wished to overleap at one bound all the barriers of the Middle Ages. The precipitancy and impatience which expressed itself in a futile programme reacted on the political situation in England and in India and weakened the position of those leaders who elected to cooperate with His Majesty's Government in the framing of a constitutional scheme for their country. This is not stated by way of complaint, nor does it imply any disparagement of the personality of some of its heroic leaders, such as Mahatma Gandhi, Pandit Motilal Nehru, Pandit Jawaharlal Nehru and Mr. C. R. Das. Nobody can deny that the movement was instinct with passion and vital with energy, nor can anyone withhold admiration for the sacrifices which some of the most brilliant sons of India underwent for the cause and for the sense of discipline which knit up the organisation and made it one of the greatest and most powerful political machines which India has ever constructed. The masterful personality of Pandit Motilal Nehru impressed its character upon the Indian Legislative Assembly in a way which aroused the admiration of every part of India, and showed to the world at large that the membership of the Congress was not confined to the ignorant and to the superstitious but included in its ranks the flower of our public life and the cream of our

intellect. These were achievements of which the Congress should be legitimately proud. But the effect of these achievements in the sphere of constructive statesmanship was exceedingly limited, as the Congress held itself disdainfully aloof from the efforts that were made in London in 1930, 1932 and 1933. Only once did the Congress take the path of cooperation; the experiment was not repeated, and it went back to its ivory tower in a mood of sullen resentment.

The Aftermath of Non-cooperation.—The non-cooperation movement was at its lowest ebb in the years 1924–26, and the Congress showed visible signs of disintegration. The tension between the two great communities of India—Hindus and Muslims - reached its climax during this period, and "communal" organisations, established by leaders of the two great communities, seemed to sweep everything before them. It was in the midst of such profound debility that Lord Birkenhead announced the appointment of the Indian Statutory Commission at the end of 1927. Many Indian leaders who had hitherto occupied themselves with issues which tended to foster either a parochial or a particularist spirit shook themselves free from these peaceful pursuits, and, marshalling the phalanx of embattled arguments and pointed illustrations, poured a concentrated fire into the serried ranks of their opponents. The Simon Commission united the two wings of Indian intelligentsia after a lapse of nearly eight years, and the coalition proved almost irresistible. The boycott of the Commission was effective in many important parts and among many influential classes of India. Even social intercourse with members of the Commission was taboo. A section of the Muslim community cooperated with the Commission, but it must be confessed that the Commission did not secure the guidance, advice and support of some of the most influential leaders of India. The evidence submitted to it could hardly be regarded as representative of every class and community in India. Had the Commission acted in a statesmanlike manner and made a noble gesture to India in their recommendations, they might have been able to rally the most stable elements in India, though it might have been difficult to work a scheme which lacked the most rudimentary elements of national support. But their major recommendations alienated even the few who had come forward to help them. Their proposals for the introduction of provincial autonomy and abolition of diarchy were fenced round with so many reservations and

provisos that they failed to arouse the enthusiasm even of their warmest supporters.

Failure of Simon Commission.—They completely ignored the national demand for Central Responsibility, and made the Central Executive more thoroughly irresponsible, autocratic and inflexible than before. The Governor-General would have become more powerful than Shah Jahan and more irresponsible than Shah Alam. The American conception of an irremovable and irresponsible executive was transplanted in a country which had been cradled in the parliamentary system and nourished on English constitutionalism. It was not a constitutional scheme but a jig-saw puzzle, and few Indians were capable of appreciating its Chinese mysteries. This may seem an unnecessarily harsh verdict on the work of some of the most brilliant, devoted and able investigators whom England has ever sent to India for the purpose. They had a sure and certain touch on the details of administrative machinery and made recommendations on many points which proved extremely useful to a succession of committees; but they missed the focal point of central responsibility, and this sealed the fate of the Report. Their conception of administrative machinery, their dispassionate analysis of the working of reforms in the provinces, the industry and ability which they brought to bear on the arrangement and analysis of the evidence submitted to them cannot be too highly praised. But they completely ignored the intensity of national demand for Dominion status, and their recommendations for provincial autonomy alternated with comprehensive proposals for an irresponsible Centre. Such a scheme was naturally unacceptable to Indians of every class and, instead of allaying political discontent, aggravated the situation and intensified the demand for complete independence and severance of the British connection.

The Nehru Report.—While the Simon Commission was carrying on its work and peregrinating in India, Pandit Motilal Nehru's Committee had published a constitutional framework which soon became the target of attacks in India. The mistakes of the Simon Commission had consisted in their failure to satisfy even the most moderate elements in India on the crucial question of responsibility in the Central Executive. The Nehru Report failed to satisfy the minorities; it aroused serious apprehensions in the minds of Indian Rulers; the European capitalists in India were alarmed, and the

consolidation of powerful interests which regarded the Report as inimical to their interest went on slowly but steadily. The Nehru Report was one of the most constructive efforts made by any organisation in India, and it placed an ideal before the country which can never be replaced. Its proposals were conceived in a spirit of gnomic pregnancy, and there was width, warmth and largeness in an edifice upon which some of the most brilliant sons of India showered their blessings.

Opposition to the Report.—There was a nucleus of reality round which crystallised the enthusiasms of a great age, the passionate memories of the people determined to assert their political rights and the fancies of poets intent on visions of a glorious future. The Report identified the ideal with the real, and placed an ideal before India which it would have taken nearly thirty years to realise. The Muslim community was genuinely alarmed by the rapidity of this transition, and was roused from its supine indifference to the need for safeguarding its political individuality. Thomas Carlyle has given a brilliant character sketch of John Bull in his inimitable *Past and Present*. He represents John Bull as going to bed whenever any important or difficult issue comes up before him for settlement. He does not indulge in an elaborate process of logical reasoning for its solution, avoids interminable discussions, long-winded orations and "logic chopping". By a happy mixture of intuition and experience he arrives at the correct solution and presents to the world a brilliant example of sound common sense.

Reconstruction of Muslim Programme.—Of the Muslim community in India it may be truly said that it is liable to be thrown into periodic fits of religious frenzy and political upheaval. It woke up in 1906 and secured separate electorate. It then lay soundly asleep in bed. It woke up again and formed a pact with the Congress in 1916 whereby its representation in Central and Provincial Legislatures was assured. It then went back to its cosy bedstead and did not wake up till 1920, when it threw itself into the Khilafat agitation with explosive energy. Torpor succeeded this outburst of feverish excitement but it was again roused in 1928 by the need for consolidation. The result was seen in the foundation of the All-India Muslim Conference in Delhi in 1928 and the formulation of Muslim demands in the fundamental resolution of

the Conference on January 1, 1929, under the brilliant leadership of His Highness the Aga Khan.

The political activity of the Muslim leaders since 1929 shows that the community is now wide awake and is determined to carry on its work with a persistence and solidarity which have been hitherto lacking. It is no longer content to work by fits and starts but is eager and keen on contributing its quota to the growth of New India. Muslim India includes a number of practical administrators, and though its political capacity was severely tested during the last six years, its organic unity, its realistic and practical outlook on life, its ardent spirit and religious solidarity, provide the strongest foundation for its political development. It adhered consistently to the Muslim demands in the First, Second and Third Round Table Conferences and before the Joint Select Committee in London, and the new Constitution embodies many of these rights. The revolt of the community against the Nehru Report was almost general, and the success of the Muslim Conference was consequently assured. Other interests soon made their objections heard, and the Congress was obliged to shelve the Report at Lahore in 1930. In the same session the Congress passed a resolution demanding independence for India. Independence did not imply absolute, unqualified and unconditional freedom from all connection with the British Empire, but *Purana Swaraj*, or *Ram Raj* or *Shudh Raj*.

Round Table Conferences.—The declaration of independence by the most powerful political organisation was followed by the launching of the civil disobedience movement throughout India and the dramatic march of Mahatma Gandhi to break the salt laws at Dandi. The political situation in India had now changed with startling rapidity, and Lord Irwin, who had returned from England in 1929 armed with his historic declaration in which the goal of Indian endeavour was defined as Dominion status, now hurried on his preparations for a Round Table Conference in London whereat delegates from India could meet representatives of English parties at a joint free conference and frame proposals for a Constitution for India. The delegates left India at a time when the country was seething with excitement, and defiance of salt and other laws was systematically inculcated throughout the length and breadth of British India. The Congress was not represented in the Conference,

but every other party and interest in the country were fully represented. The Conference was opened by His Gracious Majesty, the late King George V of blessed memory, whose deep devotion to and love for India were known and admired by all classes of His Majesty's subjects. The demise of this great and noble friend of India produced world-wide grief and India particularly mourned him.

The First Round Table Conference started its work in an atmosphere of gloom and depression, when cables poured into London from many parts of India in which the progress of civil disobedience were chronicled in a language of suavity and unction which perplexed and puzzled many a delegate. It ended with a fanfare of trumpets and beating of drums which resounded throughout the Empire. The setting of the last plenary session was as exciting and "cinematic" as the inaugural meeting had been prosaic, gloomy and depressing. It had the essence of spontaneous and natural inspiration, and the framework of the Provincial and the Federal Constitutions which it constructed during the comparatively short period of three months has survived the test of expert investigation and is embodied in essentials in the 1935 Act. The delegates started their deliberations with a fixed resolve to frame a unitary constitution for the Central Government. Within five days of the first plenary meeting they had agreed to the Federal principle for the Central Government.

Evolution of Indian Federalism.—Idealism achieved a triumph where the pedant only suffered a defeat. Rarely is the genius of statesmen of all countries guided by principles borrowed from the mechanical carpentry of imitative talent. The pedestrian and prolix proposals which had been piled up during the four years 1926–30 were quietly consigned to the limbo of oblivion, and the conception of Federalism was evolved as a result of free and frank discussion between some of the greatest minds of England and India. It was not an entirely novel conception, as proposals had been made before for the federation of British India and Indian India. These proposals had, however, remained in a chrysalis stage, and had not crossed the threshold of practical statesmanship. The Simon Commission had considered the problem, but they dismissed it with the remark that it was premature. They recommended a Council of Greater India in which questions of common interest should be discussed. The Government of India in their despatch

on Constitution Reforms did not contemplate it as a possibility, and based their recommendations on the assumption that the unitary Government, which had worked successfully in the Centre since the advent of British rule in India, would be maintained.

Federal Structure Committee.—The proposals made by the Federal Structure Sub-committee of the First Round Table Conference were based on principles which differed fundamentally from the policy and programme both of the Indian Government and of organised parties in India. Instead of a parliament for British India alone the Report provided for a Federal Legislature where representative of British India and Indian States would jointly co-operate in legislation; instead of the supremacy of the Federal over Provincial Legislature there was to be a strict delimitation of legislative powers; instead of an irresponsible Executive there was to be a Federal Ministry which would include representatives of Indian States and British India and be responsible to the Federal Legislature. The portfolios of external relations, ecclesiastical establishment and Indian States were to remain reserved and the Governor-General was made responsible for their administration. All other subjects were to be placed in charge of Ministers who would follow the procedure of all parliamentary governments and would retain their office only so long as they enjoyed the confidence of the Legislature. Full autonomy was conceded to the Provinces, and the North West Frontier Province was given equality of status with the other administrations. With a view to maintaining financial stability and preserving the railway services from political influence provision was made for the establishment of a Reserve Bank and a Statutory Railway Authority. A number of services which had hitherto been recruited by the Secretary of State were placed under Provincial Governments. Recruitment by the Secretary of State was confined to the Indian Civil, Medical and Police services and a few others. The Governors and Governor-General were vested with adequate legislative, financial and administrative powers to enable them to discharge their special responsibility for the maintenance of peace and tranquillity in India, for safeguarding its financial stability, the protection of the rights of Indian States and minorities, and prevention of commercial discrimination against British goods and companies in India. This is, in essence, the Federal Scheme which the First Round Table Conference evolved

in 1930–31. No one who has followed the negotiations that were carried on subsequently can help being struck by the solidity of the Report. It is true that three more conferences were held in London and Indian delegates were invited to discuss the details of the scheme at the end of 1931, in 1932 and 1933.

Shifting Scenes.—Nor can it be denied that during the whole of this period India underwent startling changes. In London itself, in the years 1930–33, it seemed as if in each year the Indian delegates grouped themselves for a moment ere they flitted away. Next, the scene is shifted and another procession enters. Fresh *tableaux vivants* are arranged, and when we have accustomed ourselves to their melodies of form and colour the spell is once more broken and new actors enter, or rather the same actors enter a new scene. The stage is never empty; scène melts into scene without breathing-space or interruption and fresh images pass across the *camera obscura* in bewildering profusion.

The real explanation of the prolonged delay is to be found in the infinite complexity and intricacy of the task. Had the delegates confined themselves to an outline of the Federal and Provincial Constitutions of the new political structure the work would have been finished in the first year. But everyone felt, as he proceeded with the elaboration of the scheme, that he was called upon to decide not merely political but also social and communal issues of appalling intricacy. The representation of various minorities—Sikhs, Muslims, Europeans, Anglo-Indians, Indian Christians, etc.—in the Federal and Provincial Legislatures had involved a heated controversy in India for years, and the first two Round Table Conferences found their progress blocked by the insistence of certain minorities on a settlement of outstanding issues. No progress was possible unless His Majesty's Government announced their decision on this vexed issue. This was done in August 1932, and one serious obstacle to the work of the constitution-making was thereby removed.

There were, however, other problems which insistently demanded settlement. The Congress had held sullenly aloof from the First and Third Round Table Conferences, and it was not represented in the Joint Select Committee. As it was undoubtedly the most powerful political organisation in India, its failure to cooperate reacted on the position of Indian delegates who continued to cooperate with His Majesty's Government. Their responsibility

was proportionately greater, but their representative character was frequently called into question by the Congress. There were other problems which imperatively demanded settlement. The European capitalists in India were apprehensive of the policy that might be pursued by Indian Legislatures unless adequate safeguards were incorporated in the Constitution against discrimination of their firms in, and importation of English goods into, India. Again, Indian States refused to decide the question of their entry into Federation until they had seen the complete picture. The Depressed Classes had attained self-consciousness and had presented their claims to the Simon Commission, while their leader in London championed their cause throughout this period and succeeded in making an excellent bargain with Mahatma Gandhi in Poona in August 1932. After achieving political rights they demanded special equality—a proposition which was morally sound but unfeasible.

Difficulties of Indian Settlement.—This brief analysis will show that the negotiations in London were concerned not merely with the political framework of a sub-continent, but also with the social and religious implications of political rights. It was perfectly easy for the British Parliament to pass the North America Act in 1867 for the Dominion of Canada and the Commonwealth of Australia Act in 1900 for the Australian Federation, as in both cases the delegates acted as plenipotentiaries and went to England with a cut-and-dried scheme. The British Parliament made little substantial alterations in these "agreed settlements". India was specially unfortunate in this respect, as her domestic issues, instead of being settled here, were discussed threadbare in London, and afforded an excellent vantage-ground for caustic comments, stereotyped phrases and poignant dithyrambics in which many persons indulged. While the Constitutional pundits discussed in the serene calm of gorgeous apartments in St. James's Palace the advantages and disadvantages of residuary power, the communal pundits painted the hues of Indian religious life in words which lost none of their effect by concentrated fervour and pitiless iteration. These were some of the important issues which Indian delegates in the first three Round Table Conferences (1930–32) and the Joint Select Committee were called upon to decide. The First Round Table drew up the outline of the new Federal scheme; the Second discussed subjects such as Federal finance, a Federal Court and discrimination which had

been left over by the First; the Third filled in details, while the Joint Select Committee surveyed the complete picture and made its final recommendations in November 1934. The resulting Bill was closely debated in the Houses of Commons and Lords and was passed into law on August 2, 1935.

Spadework of Constitution-making continued.—The work of constitution-making was carried into 1936, for the Act provided for Orders in Council regarding the delimitation of Constituencies for the new Indian Legislatures and many other matters to be submitted in draft to Parliament. Orders in Council on the delimitation of constituencies, based mainly upon the report of Sir Laurie Hammond, and on the allocation of finances, based on Sir Otto Niemeyer's recommendations, have been made; and thus the way has been cleared for the Order in Council which makes April 1, 1937, the day of commencement of Provincial Autonomy. The Orders in Council regarding the Excluded Areas have also been approved by His Majesty. With incredible expedition the indispensable preliminaries to the making of the new Constitution have been put through by His Majesty's Government.

An idea of the enormous complexity and labyrinthine ramifications of the new Constitution Act will be gauged from the fact that problems connected with the revision of the entire Statute Book of India have cropped up, and the machinery devised for the purpose is twofold. The India Office is responsible for the revision of the British statutes, while the Reforms Office in Delhi is responsible for the Indian and Provincial statutes. Revision of Indian and British statutes is necessitated by the fact that the entire Statute Book of India, both Central and Provincial, must conform to the new Act through replacing the existing authority by the one proposed in the Constitution Act. Every Provincial Government has appointed a special officer for the revision of statutes, and these officers report to the Reforms Office in Delhi, who, after examining the proposals, forward them to the India Office in London. One or two examples will clarify this point. District authorities have been given certain power to levy taxes. The question arises whether residuary power should be vested in the future Local Governments. Again, there are statutes which deal partly with Federal subjects, such as Customs, and partly with Provincial subjects, like Law and Order, and it is not clear whether an existing statutory power falls

within the purview of the Federal Government or Provincial Governments. A Parliamentary Order in Council will deal with the question on uniform principles of interpretation, and replace the existing authority in disputed issues in consonance with principles which, in the opinion of Parliament, are in full accord with the spirit and letter of the new Constitution Act.

New Constitution based on Compromise.—The new Constitution is the result of a compromise and it has all the virtues and all the vices of a compromise. It is not, and could not be, an ideal solution of problems which have the closest bearing on the social, religious and political traditions of various creeds and interests. It represents experience, is chary of ideals, is severely practical and is avowedly a political hybrid. It lacks architectural unity and, though massive in its structure, there is no simple and yet colossal design like that which forms the strength of the Australian Constitution and the Constitution of the United States of America. Federation forms, it is true, the connecting link, but the threads by which it is held together are light as gossamer. The Central conception is confused with a multitude of subordinate authorities, until it is gradually transformed into unitarism and centralism of the old type. Like a pyramid upon the top of which the political architect has placed a gilded statue, up grows this magnificent edifice, assuring autonomy to the Provinces, but it narrows to a point wherein the distinction between the pre-reformed and post-reformed Provinces virtually disappears. The sustaining pillars of the new Constitution are an efficient and zealous bureaucracy, imbued with traditions of social service and integrity, a virile, patriotic and experienced middle class, nurtured on the parliamentary system and traditions; minorities and special interests who have benefited by the concessions it offers them in the Indian legislatures; Indian states, who will now be able to pull their full weight in the legislation and administration of India: and, finally, the large bulk of law-abiding, stable and influential elements of the entire Indian population, who, though disappointed with the limited power which the new Act confers on Indians in the Centre, are prepared to use the new Act for what it is worth, and serve their motherland by developing the enormous resources of India for her economic and social uplift.

Constitutional Agitation should be Maintained.—This brief sketch will show that the new measure does not mean a cessation of our

constitutional struggle for complete Dominion status. It is not and cannot be as the law of Medes and Persians. The national demand for Dominion status remains, and until that demand is satisfied political agitation must continue. But our methods for implementing this demand must be varied to suit the changed condition. A new technique is needed for the new machinery. Our demand will henceforth take the form of vigorous constructive work among the virile peasantry which is our country's pride; of cooperative work in the Legislatures, both Provincial and Federal, in which our capacity for leadership and ability to govern is tested in the stern school of responsibility; and of inter-communal work among the different communities and classes, whereby our nationalism is consolidated and minorities are so far relieved of apprehensions and anxieties as to forgo their special rights after the lapse of a reasonable period. The new Act postulates toleration, using the word in its comprehensive sense; toleration by Englishmen in India and England of the national demand for self-government in India; and toleration by Indians of the legitimate rights of the European mercantile community and British servants in India. Inter-communal toleration is no less essential, as India will be thrown back into the eighteenth century if internecine strife synchronises with the introduction of new reforms. Happily, communal passions have now cooled down, and when provincial autonomy is introduced leaders of all communities will throw themselves into the task with vigour and energy and find little time to listen to the siren voice of the fanatic.

Place of the Crown in our National Development.—Whatever be the fate of the new measure, whatever the permutations and combinations of parties and programmes which we may bring about, one fact emerges vividly from the din of party strife and political controversy. The temper of their mind and the sphere of their conceptions make the Indian people of all parties unswervingly loyal to the British Crown. It is the cement which binds not merely the various parties of the Empire but the various classes of His Majesty's Indian subjects together. This was clearly manifested in the Jubilee celebrations no less than on the passing of His Majesty King George V of blessed memory. Mr. Baldwin's magnificent oration on the noble work of our gracious ruler will find an echo in every heart in India: "The greatest achievement of the last century which culminated in the reign of King George was the

coming to terms by democracy with monarchy, thus evolving a new system which it was believed gave a stability to the body-politic that most countries would give all they possessed to have. While the temporal power of the Crown had diminished, its spiritual power, far greater than ever, was not only the link holding together the country but the whole Empire of English-speaking peoples, and was the indissoluble link holding together the myriad races of India."

Separation of Burma from India.—I have not deemed it necessary to deal with Burma, as the book is confined to the Indian Constitution. Burma has been separated from India, and the only important issue with which India is concerned is the principle on which trade between India and Burma is to be regulated. The Simon Commission reported in 1929 "that Burma imports on the average Rs. 15½ crores' worth of goods from India, chiefly consisting of gunnies, tobacco and cigarettes, twist and yarn, piece goods, coke and coal, and betel nuts. On the other hand, India imports from Burma goods of the average annual value of Rs. 24 crores." The Commission stressed the need of a special trade convention between Burma and India. This was written in 1929. Since then considerable increase has taken place in Indian imports into Burma. Burma has few industries of her own, and the proportion of Burma's trade with India has increased from 40 to about 70 per cent in seven years. It was clear that a violent break in this relationship was fraught with serious consequences to both countries, and the Joint Select Committee recommended that "legislative provision for both India and Burma should state the minimum period which must elapse before either party to the agreement can give notice to terminate it, and also the length of this period, which might conveniently perhaps be twelve months". Early in 1935 negotiations took place in Delhi between the two Governments, and both agreed to a free-trade convention for five years. This produced protests in Lancashire, and after much discussion an Order in Council was drafted whereby the period is fixed at three years. For that period after the date of separation trade exchanges will be "free of all tariff, except the few which already exist, and except where at the date of separation there are excise duties, in which case an import duty equivalent to the excise will be levied". For the same period there will be no restrictions on the immigration of Indians to Burma or *vice versa*, except those which are already in force.

CHAPTER I

THE FEDERAL CENTRE

BEFORE we describe the new Constitutional structure, a sketch should be given of the Government of India Act of 1919. Mr. Montagu's statement of August 20, 1917, laid down that it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. It added that such progress could only be achieved by successive stages, and the manner and time of such advance could be determined only by Parliament. The Montagu-Chelmsford Report worked out the implications of this declaration, and the joint scheme was embodied in the Act of 1919, with a few modifications. They were opposed to the grant of complete provincial autonomy, which could not be given immediately without inviting breakdown. They thought that the setting up of the Provincial Legislatures with a majority of members for the first time directly chosen by an inexperienced and largely illiterate electorate could not be at once combined with the handing over of all the provincial departments, including the police, the magistracy and the revenue to Ministers whose administrative experience was relatively small and who would be solely responsible to newly created Legislatures. Hence provincial subjects were classified as "Transferred" and "Reserved". Under section 45 A (1) (*d*) of the Act of 1919, rules could be made for the transfer from the "reserved" list to the "transferred" list.

Reform Act of 1919.—The elasticity of this section made it possible to effect substantial changes within the framework of the Act. It was contended by one school of thought that under this section dyarchy itself could be abolished by complete transfer of all "reserved" subjects to the "transferred" list. Sir William Marris, the Governor of the United Provinces, dissented from this interpretation of the Act, and the Simon Commission seemed to agree

with this view. They argued that if this process is carried out to its logical conclusion, "there would be no subject reserved and nothing will be left for the official half of the Government to administer". The controversy has now only an academic interest, as the Indian National movement concentrated its energies on the issue of central responsibility. If this were achieved, provincial autonomy would logically follow.

Diarchy in the Provinces.—The Government of the Provinces was diarchical and their orders were issued by the Governor acting with his Ministers if they referred to transferred departments and by the Governor-in-Council if they concerned the reserved half. There was naturally a certain amount of friction between the two halves of the Government in some Provinces, but the success of the experiment was determined to a large extent by the personality of the Governor and his relations with members of his Government. Diarchy, however, was doomed, as the Simon Commission were forced to recognise. The powers conferred upon the Provinces by the Act of 1919 were so restricted and circumscribed that it was impossible for them to act with energy or independence.

The Centre had the right to call upon the Provinces for financial help, and the Meston Settlement had crippled their financial activity, disorganised their constructive programmes and dislocated their administrative machinery. The Central Assembly never exercised the right with which it was vested, but it could pass any law on a purely provincial subject without any statutory restriction. Provincial patriotism found an outlet in various activities, and education, sanitation, agriculture, industries, excise administration and construction of roads and bridges gave scope for the pioneering energy of a few zealous Ministers. During the non-cooperation period they found themselves hampered at every turn. Outside the charmed circle of the Council Chamber they received the jeers and bore the insults of a powerful and mercurial agitation, intent upon wrecking and determined to defy the law. Inside the administration the Central Government loomed large and the volume of regulations, rules, sections and subsections which governed provincial affairs presented an appearance so formidable and forbidding that it would have daunted the courage of a Samson. Meanwhile the demand for genuine provincial autonomy in which the Provinces would be vested with substantial powers grew in

volume. An influential school of thought, represented by the autonomists, insisted on real autonomy in which the Provinces could move and breathe freely. They wanted not the shadow but the substance of autonomy, and they organised all the dormant energy and vested interests of provincial patriots in launching their campaign.

Federation necessary for genuine Provincial Autonomy.—Such a demand would have been impossible of realisation without Federation, and the autonomists supported it mainly because the new scheme would give the units greater control than was possible in a strictly unitary form of government. They felt that if the new Provinces were built on the quicksands of autocracy and irresponsibility by the Centre, provincial autonomy would be a farce, as the Provinces would remain at the mercy of the Centre. India's geographical position, the infinite diversity of her races and creeds, the deep cultural and economic cleavage between Provinces, and the impossibility of moulding a huge sub-continent in the pattern of a totalitarian State, rendered Federalism not merely feasible but imperative. A Byzantine State cannot flourish in a country like India, and the Moghul emperors, whose organising ability and administrative reforms have not been fully appreciated, wisely respected provincial feelings and interfered little in the day-to-day life of the Provinces. The autonomists were joined by some members of States' delegation who were as anxious as British Indians to restrict the control of the Federal Government within the narrowest possible limits. The movement for Federation strengthened the hands of autonomists, as Federation postulates precise delimitation of legislative functions between the Centre and its constituent units. It would have been impossible to realise the Federal scheme and give it flesh and blood if various forces had not converged on a central issue from different motives. The idealists wanted Federation because without it British India and Indian India could not achieve unity; others advocated it because without it genuine and substantial provincial autonomy was impossible; while some distinguished leaders of the States' delegation supported it as giving for the first time in the history of modern India full scope for mutual deliberation and consultation on questions of common interest.

Unique Type of Indian Federalism.—The Federation which is

about to be established by the Act of 1935 makes a complete departure from the laws and regulations under which India has been governed since the advent of the British in India. The Act of 1919 had made few structural changes in the Central Government or the Central Legislature, and though the Legislative Assembly had been enlarged and a non-official majority was provided for, it possessed no real powers. Members of the Executive Council are appointed by the Crown and are not responsible to the Legislature. The new Act sweeps away most of the provisions of the Act of 1919 and it establishes Federal Government in place of a unitary Government.

A story went round St. James's Palace in 1930 that a distinguished delegate from India had gravely proposed at a meeting of one of the sub-committees that some eminent professors of political science should be called upon to give a course of lectures on Federation. The suggestion seems to have been politely ignored and no further action seems to have been taken on this remarkable proposal by any responsible person. The story correctly pictures the anxiety and perplexity into which many Indian delegates were thrown by the Federal proposals, and gave expression to the feelings of many people who gathered together on a foggy London morning to hammer out a new scheme for India. The author has no hesitation in confessing that he, along with some others who had not been through their novitiate, started his work by a voracious study of Bryce and Freeman, Sobei Mogi, Georg Jellinek, Seydel and others. The States' representatives were familiar with exponents of the Bavarian school, while the Centralists pointed with enthusiasm and admiration to the vigour and effectiveness of the Canadian and South African Governments. A compromise between two views was arrived at after prolonged investigations and discussions. But the suggestion of the delegate for a course of lectures was found to be impracticable.

Constitution not based on Marxian or Hegelian Dialectic.—It was based on the assumption that a few "fundamental" principles, carefully selected and elaborately explained with the apparatus of a narrow and crabbed legalism, would suffice to inspire the members of the Committee with knowledge, experience and wisdom, and they would be greatly helped in the framing of the new structure if they applied them according to the strictest canons of Hegelian dialectic.

However, no delegate was tempted to involve himself in the Serbonian bog of political metaphysics, as two or three days of thorough discussion in the first session of the First Round Table Conference showed to every member the appalling complexity and intricacy of the problem. Federations have normally been the expression of a general desire on the part of a number of political units, each possessed of sovereignty or at least of autonomy, and each willing to surrender to the new body which their pact creates an identical range of powers and jurisdiction, to be exercised by it on their behalf to the same extent for each one of them individually and the Federation as a whole. Judged by this correct and orthodox definition of Federation the traditional structure of India seemed to offer utterly unsuitable material for experimentation on a heroic scale.

To begin with, India is, and has been, a unitary State for centuries. The Moghul Government was essentially a despotism tempered by a highly trained bureaucracy. In its latter stages it degenerated into bureaucracy of the worst type. The English Government inherited the old revenue administration of the Moghuls, and the collector of revenue in each district—the functionary who is the vital link in the provincial administration—performs most of the functions which had previously been assigned to Moghul officials. The complexity of modern conditions has increased his powers in one direction, while the growth of self-government has reduced them on the other. Broadly speaking, the collector was, and even now is, the pivot round which the administrative machinery revolves. He is still the focus of all activities in the district.

Analogy between French Intendant *and Collectors in India.*—If De Tocqueville had visited India in 1834 instead of the United States of America, he might have given us a brilliant comparative study of British and French institutions in the early nineteenth century and likened unhesitatingly the position of the British collector in India to that of the French *intendant* before the French Revolution of 1789. In India, the secretariat system had been established a long time before the reorganisation of the district administration, and the result is seen in the process of "stratification" and centralisation which found its perfect expression in the régime of Lord Curzon. So highly centralised had the whole machinery become that even

the bureaucratic mind of the great proconsul recoiled from its coils and he was obliged to give forcible expression to his woes in notes in which one can detect his scintillating phrases and Corinthian style. Another difficulty in the way of Federalism lay in the fact that the Provinces had no original or independent powers or authority to surrender, as their powers were derivative and the Secretary of State for India was vested with unlimited power and duties relating to the government and revenues of India. He had divested his power over transferred subjects, but in other spheres his control over the Provinces no less than the Central Government had remained unimpaired. The Provinces remained subject to the control and supervision of the Central Government, and the latter in turn were controlled in many important respects by the Secretary of State. The chain of dependence was complete.

Position of Indian States.—The other class of units—the Indian States—stood on an entirely different footing. They are sovereign in their domestic affairs and are bound to the Crown by treaties, engagements, *sanads* (grants), usage and practice. The rights, authority and jurisdiction exercised by the Crown in British India do not extend to Indian States unless express provision is inserted to that effect in their treaties or the right is an inherent part of paramountcy. As Parliament cannot legislate for them directly, the accession of an Indian State can be accomplished only by the voluntary act of the ruler. The States are free agents and cannot be compelled to enter the Federation, but British Indian Provinces were given no option, as representatives in the Round Table Conferences had already accepted the broad outlines of the scheme. Another difference may be noted. The States were determined to reduce the Federal subjects to an irreducible minimum as they wished to preserve their sovereignty over a substantial number of important subjects. Hence the range of Federal authority in Federated States will be smaller than in British Indian units. This brief analysis will show that, unlike other federations, Indian Federation is unique in the variety and inequality of Federal burdens which the two classes of Indian Federation will be called upon to bear, and in the perplexing and complicated arrangements for the enforcement of Federal laws in the two classes.

Crown Authority.—The legal basis of the new Government consists of the resumption into the hands of the Crown of all rights

and authority and jurisdiction over the territories of British India, in whatever authority they may now be vested; and the redistribution of this authority between the Federal Government and its units. Section 2 of the Act makes this clear. Subsection (2) of section 2 specifies the rights, authority and jurisdiction hereinbefore exercisable in relation to any territories in India by the Secretary of State and Governor-General in Council, and Governor or any local Government.

Section 3 makes a dual distinction in the office of the Viceroy. The expression has never been used in a statute or a warrant of appointment. It is a term of courtesy and, following the recommendation of the Joint Select Committee, it will continue to be used. The office of the Governor-General of the Federation will be constituted by letters patent, and that document will enumerate the powers which the Governor-General will exercise as the King's representative. These powers will include all the powers conferred upon him by the Constitution Act and such other powers not inconsistent with the Act as His Majesty may delegate to him. The Governor-General himself will receive a commission under the royal sign-manual appointing him to his office, and the manner and method of his exercise of these powers and duties will be indicated in the Instrument of Instructions which he will receive from the King. The same arrangements, *mutatis mutandis*, are contemplated in case of the Governor of each Province. The Instruments of Instructions to the Governor-General and Governors have acquired a new significance in the present Act, and will be dealt with in their proper place.

Dual Position of Viceroy.—The Viceroy, as representative of the Crown in India, will exercise powers of paramountcy outside the Federal sphere over non-Federated States, as well as in non-Federal subjects of Federated States. The Constitution Act is not concerned with these powers as they lie outside the ambit of the Federation and are governed by the principles and practices of paramountcy. It is difficult to give a precise definition of the unique relationship between the British Crown and the Indian States. The Butler Committee tried to express this fluid relationship by stating that it is not merely a structural relationship made more than a century ago: it is a living, growing relationship shaped by circumstances and policy, which is a mixture of history, theory and modern

fact. Lord Reading, in a letter to His Exalted Highness the Nizam in 1926, went a step further and asserted that "the sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only on treaties and engagements but exists independently of them, and quite apart from its prerogative power it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India." This clear and forcible statement of paramountcy was no doubt regarded by many Indian States as an undue and unnecessary extension of a principle which had explicitly recognised the sovereignty of the States in their domestic affairs.

Inauguration of Federation.—Section 5 provides that:

"(1) It shall be lawful for His Majesty if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India:

(a) The Provinces hereinafter called Governors' Provinces; and

(b) the Indian States which have acceded or may thereafter accede to the Federation;

and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioner's Provinces.

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule of this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained,

have acceded to the Federation."

This section will bring into being a new organism, the Federal Government consisting of British Indian Provinces and the Indian

States which have acceded or may afterwards accede to the Federation. Regarding the Indian States there are two further conditions: (1) that the rulers will, in accordance with the provisions in the first Schedule of the Act, be entitled to choose not less than fifty-two members of the Council of State; and (2) that the aggregate population whereof amounts to at least one-half of the total population of these States.

Difficulties of Indian Federation.—A Federal Government is infinitely more complicated than a Unitary Government, and in the case of an All-India Federation the complications will be intensified by the fact that the units show an extraordinary diversity. These complications will react upon the application of almost every section of the Act. Take, for instance, the provisions relating to the establishment of the Federation. The Princes, being voluntary agents, cannot be forced to accede and compulsion is out of the question. They determine the character of the Federal Executive and the Federal Legislature, as each class of units naturally demands effective representation both in the Government and in the Federal Legislature. Again, they react upon the relations between the two chambers. The Princes from the very beginning attached the greatest possible importance to both the chambers possessing equal power. They react further upon the list of Federal subjects. The Princes insisted that the list of Federal subjects should be as small as possible in order that they may be immune from unnecessary interference by the Centre. The competence of Federal Legislature was thus greatly restricted owing to the general wish of States and autonomists who wished to limit the power of the Federal and extend the competence of the Provincial Legislatures. They react further upon Federal finance, as the Princes insist on the reservation of a substantial amount of income tax for the maintenance of stability in the Centre, though they will bear only a small proportion of this burden, and their payments to the Federal fisc are limited to the corporation tax, which will form an extremely small part of the total revenues of the Federation. These difficulties considerably complicate the Federal scheme.

Their Effects on Federal Structure.—Section 5 summarises the main points of an agreement among different parties relating to the inauguration of Federation. An important body of opinion suggested, in 1931, the passing of a short amending Bill establishing

complete provincial autonomy in British India. The advocates of this policy were eager for immediate provincial autonomy and argued that it was better to go ahead with complete self-government in the Provinces so that all the important units of Federation may be thoroughly equipped for the important part which they will play in the Federal Centre. This, of course, did not mean that the Federal scheme would become a remote contingency, nor did it imply any departure on the part of any delegate or section from the broad lines of the Federal scheme. They merely wished to expedite the work of the Conference by going ahead with an important part of the Reforms scheme without further delay. These proposals could not be carried out, as it was feared that if autonomous Provinces were started without a Federal link at the Centre, centrifugal forces would come into play, and the scheme of All-India Federation might recede into the background. The Federation, if started under such auspices, would then have become immensely weaker, as all the Provinces would have combined on one common objective, viz. to extort from the weak and defenceless Centre a maximum amount of financial, legislative and administrative concessions. The position would have been intolerable in any case and the Federal Government thus formed would have been too demoralised and disorganised to perform its functions with the necessary vigour and initiative. Such a Centre would have been unstable and incompetent. The British Government had a special interest in maintaining its stability, as British capital has been invested in many important Indian undertakings. Few investors would have risked investment in an unstable Federal Government. This view was strikingly put by Sir Samuel Hoare in the House of Commons on February 20, 1935, who pointed to "the financial interest that depends upon the large sums that are due for meeting the obligations of India to this country, the obligations of the debt, the cost of Indian defence, the cost of pensions for pensioners in this country".

Clause 6 (ii) *of the Bill and the Princes' Objection thereto.*—Clause 6 (ii) of the Bill as originally framed provided that—

> "A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of a declaration made by the Ruler thereof, whereby the Ruler for himself, his heirs and successors,

(a) declares that he accepts this Act as applicable to his State and to his subjects, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court, and any other Federal authority established for the purposes of the Federation shall exercise in relation to his State and to his subjects such functions as may be vested in them by or under this Act;

(b) specifies which of the matters mentioned in the Federal Legislature list he accepts as matters with respect to which the Federal Legislature may make laws for his State and his subjects and specifies any condition to which his acceptance of any such matter is to be deemed to be subject; and

(c) Assumes the obligation of ensuring that due effect is given to this Act within his State."

The Ministers of Indian States who met at Delhi on February 19, 1935, strongly opposed this clause and communicated these views in a letter to the Secretary, Political Department, on February 23. Then the Princes met at Bombay and fully reaffirmed the criticism of their Ministers. These criticisms were misrepresented as unequivocal rejection of the Bill, but the position taken up by the Princes was perfectly clear and intelligible.

(1) They objected to this clause because it made the entire Act, subject to certain specific limitations, binding on the States, thereby giving unlimited scope for the development of ancillary powers.

(2) It subordinated the Instruments of Accession to the Act instead of, as had clearly been understood, making the Instruments of Accession govern the Act, and,

(3) Finally, the clause did not specify that the powers delegated by the States to the Crown were only for the purpose of Federation.

The States urged that in their relations with the Federal Government they should be governed exclusively by their Instruments of Accession which will explicitly lay down the reservations and conditions on which they enter the Federation. Unless that were done there was a possibility of encroachment of the non-Federal sphere by the Federation and gradual, though imperceptible, aggrandisement of the Federal authority at their expense.

We need not discuss here the question whether the States had not shifted their ground after a comparatively long interval of

criticism and debate among themselves. Nor is it germane to the issue to reply, as some have done, that they had initially decided to place these powers at the disposal of the Federation.

States' Demands conceded.—The States had undoubtedly a very strong case and occupied a strategic position in their negotiations with British India on the one hand and the Crown on the other. Sir Samuel Hoare stated, in the House of Commons on February 20, 1935: "It has always been the States' intention that the application of this Act to any Federal State should be governed by the rulers' Instruments of Accession. The ruler alone can determine, subject, of course, to acceptance of the Accession by the Crown, the extent of the field over which the Federal authorities are to operate in his State." The States feared that the original clause might lead to a substantial diminution of their sovereignty. The apprehensions of rulers were understandable. The effective and almost insuperable objection to giving unlimited freedom to Indian States in the selection of Federal subjects lay in the fact that an arbitrary selection of Federal subjects by a ruler will make the Constitution thoroughly unworkable. Obviously no ruler of an Indian State could be given complete liberty to pick and choose not only the number of subjects for which he is prepared to accede to the Federation, but also the extent of control which the Federation should exercise over each subject. Such a Constitution would become a gigantic jig-saw puzzle, and it would include within itself nearly fifty different kinds of Constitutions. The net result of such freedom would have been to throw open to negotiations the enormously large field of the Act and make it a perennial source of confusion, litigation and vacillation.

Another difficulty would be that neither the British Parliament nor the British Indian Provinces could know what kind of Federation was going to be established. There would be no uniformity of administration or legislation, and the whole scheme would be torn into ribbons. Some States might choose the first ten subjects from the Federal list while others might start off with subjects comprised in entries 11 to 20. There would consequently be not one Constitution for India but fifty different Constitutions, each containing an infinite variety of arrangements and each capable of an infinite amount of misconstruction. The States were reminded that they will be permitted to federate only on the basis of an irreducible

minimum number of subjects which could constitute the essentials of a stable federation, and it was essential that the Crown should reserve the right of rejecting any Instrument of Accession which did not conform to the first forty-eight subjects included in the Federal legislative list. Such a kind of Dutch bargaining and huckstering with unlimited freedom to each State to pick and choose any subject it liked would have reduced the whole Federal scheme to dust.

The White Paper proposals of the Government had indicated the subjects (1 to 48) in the list which the Crown would expect every State to accept. This had been emphasised by Sir Samuel Hoare in his evidence before the Joint Select Committee. The negotiations of Indian States' advisers with the India Office resulted in a workable compromise which was announced by Sir Samual Hoare and has been embodied in section 6 of the Act. The points of the States were partially met and in the Instruments of Accession each State will set out the subjects for which it is prepared to join the Federation. As the Federation is concerned only with the subjects for which States have acceded, the States' sovereignty over other subjects remains unimpaired, subject, of course, to the exercise of paramountcy by the Viceroy.

Section 6.—Section 6 lays down that "A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of the Instrument of Accession, executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

(a) declares that he accedes to the Federation as established under this Act with the intent that his Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of Federation shall, by virtue of his Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them under this Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession."

The main effect of this section is that the ruler transfers through the King to the Governor-General of India the Federal Legislature,

the Federal Court and, what is most significant of all, any other Federal authority, established for the purpose of Federation, his sovereignty over subjects which will be specified in his Instrument of Accession.

The section makes it perfectly clear that the Federal Court, the Federal Legislature and in fact Federal officers will have full power of administration over such subjects These powers may be exercised by State authorities on behalf of the Federal Government, for section 125 lays down that agreements may, and if provision has been made in the Instrument of Accession shall, be made between the Governor-General and the ruler of a State for the exercise by the ruler or his officers of functions in relation to administration in his State of federal laws. Such an agreement shall authorise the Governor-General to satisfy himself by inspection or otherwise that the administration of such laws is carried out in accordance with the policy of the Federal Government, and the Governor-General, if he is not satisfied, may issue such directions to the rulers as he may deem fit. Moreover, by section 128, the Executive authority of every federated State shall be so exercised as not to impede or prejudice the Federal authority, and the Governor-General is empowered to issue such instructions to the ruler as he thinks fit. The Federal Government is thus given power in States' territories over subjects for which they have acceded, and though the functions of the Federal authorities may, *ab initio*, be exercised by State authorities, control of the Federation over these subjects remains unimpaired. Section 6 concedes a point of some importance to the States, as they are not bound by the Constitution Act as such, but by their Instruments of Accession. In actual practice, the difference is very small, as the States, once they have signed an Instrument of Accession, come automatically under all the provisions of the Instrument, but which must conform to the Constitution. The States will retain their sovereignty over subjects for which they have not federated. There will be two parallel administrations functioning in every Federated State—the Federal officials and State officials—and the sphere of States' jurisdiction will be considerably curtailed in actual practice by the power and prestige which the new Federal Government will build up in course of time. The arrangement is not so anomalous as may at first sight appear. The United States supply an extremely good illustration of the dual system. In every

State there are State and Federal officials. The powers of the Federation over Indian States would be much more restricted than that of the Government of the United States of America. Again, if we look at the question from the point of view of actual practice, and not in its purely legal aspect, the powers which the Government of India have accumulated by treaties, engagements and conventions over currency, railways, telegraphs, telephones, defence, etc., are so large and extensive that the States' sovereignty is visibly curtailed over these subjects. Had they not parted with it in the last century, India could not have been linked up by railway and telegraph.

Extent of Rulers' Surrender of Sovereignty over Federal Subjects.—The Act makes it clear that the ruler accedes to the Federation for his heirs and successors, and the Federal authority in a Federated State is to be exercised for *the purposes of the Federation.* The ruler assumes the obligation to ensure that Federal laws are effectively carried out in his State. The Federal Government will thus be able to exercise effectively its authority not only over legislation but also administration. The Viceroy, both as Governor-General and representative of the Crown in India, will naturally be the strongest connecting link between the Centre, the States and the Provinces, and it will be his duty to see that there is active cooperation between them. As Governor-General he will have well-defined powers which will make him legally supreme in certain spheres—such as defence, external relations and ecclesiastical affairs. As representative of the Crown in India, he will continue to exercise all the rights of paramountcy. It is not too much to say that his legislative, financial and administrative powers, added to his powers over Governors of Provinces and his rights as representative of the Crown in India, will make him the linch-pin of the Constitution. If a State is negligent or recalcitrant he can conveniently exercise his double rôle and call upon the ruler to carry out a Federal law. The sovereignty of any State over subjects for which it has not federated will remain intact, but to anyone who has followed the trend of federations all over the world, it is clear that a ruler will find it extremely difficult if not impossible to maintain a vital distinction between Federal and non-Federal subjects in his domain. National solidarity and unity, the irresistible pressure and march of the Centre, the growth of representative systems in States and the gradual abolition of economic barriers, will make serious inroads on their sovereignty.

Every Viceroy will tend to favour a policy which has at its back the support of the Federal Legislature.

The irresistible Trend of all Federations.—The treaties made by the States have not been and could not be affected by the Constitution Act. States which do not federate will continue to be governed in their relations by such treaties, but as time goes on the Princes will find that the policy of isolation is detrimental to their interests and very few States will ultimately hold out. The Act lays down that the Treaties of Accession shall specify the matters which the ruler accepts as subjects with respect to which the Federal Legislature may make laws in his State. The Instrument of Accession may be varied by a supplementary Instruction, whereby Federal authority may be extended in the State. While the Act makes provision for extension of Federal authority over States, it is silent regarding the reduction in the number of subjects for which a ruler originally contracted. It forbids it by implication, as it is clear that such a contracting out will dislocate the administrative machinery. A ruler must decide once for all whether he is prepared to accede for a minimum number of subjects which are essential for a Federation. If he wishes to add to his list, there cannot possibly be any objection. But if he wants to reduce his original list of subjects, he cannot do so consistently with the basic principle of Federaton.

A Federation is perpetual and indissoluble in spite of legal conundrums and juristic gymnastics, and once the States decide to part with their sovereignty over certain specified subjects they cannot claim it back, in spite of subsections (4) and (5) of section 45 of the Act giving powers of resumption by the Governor-General in case of failure of the Constitutional machinery. There is reserved to the representative of the Crown the power to reject any Instrument of Instruction, if it appears to him that the terms of the Instrument are inconsistent with the Federal scheme. This is a very important part of the Act, as it guards against a series of contradictory or incomplete proposals which may be broached by different States. Negotiations have gone on between the legal representatives of Indian States and the India Office regarding the form of Instruments of Accession. While a standardised form will be an ideal to be aimed at by the Government, a certain variation will, and must be, conceded to some States.

Rulers' Instruments of Accession.—The Instruments of Accession

will, as far as possible, be uniform in all cases, otherwise insuperable difficulty may be experienced by the Federal Court in interpreting some expressions or phraseology peculiar to one Instrument of Accession, and not found in others. The Joint Select Committee remarked that the accession of all the States to the Federation will be welcome; but there can be no obligation on the Crown to accept an Accession where the exceptions or reservations sought to be made by the ruler are such as to make the accession illusory or merely colourable. The Instrument of Accession will be executed by the ruler himself, but it may be executed on his behalf by any person who for the time being exercises the powers of the ruler. After the establishment of the Federation the request of a ruler for admission to the Federation shall be transmitted to His Majesty through the Governor-General, but, on the expiration of twenty years after the establishment of the Federation, the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature an address praying that His Majesty may be pleased to admit the State into the Federation. Copies of the Instrument and of His Majesty's acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of them.*

Sir Samuel Hoare's Views on the Subject.—There are a few points in connection with the accession of Indian States which need elucidation. While the Governor-General will normally insist on an irreducible minimum of subjects, there will be slight variations both in the quantum of subjects for which the States may accede, and which may be regarded as the core of the Federation, and the extent of control over each subject by the Federal Centre. Let me here refer to the questions (7835–6) put by me to the Secretary of State for India on July 25, 1833, in the Joint Select Committee:

"May I take it that in the Treaties of Accession which the States will sign it will be laid down that if they wish to enter the Federation they must take all the subjects from 1 to 48 of the White Paper and accept them as Federal subjects, or will there be considerable variations in these subjects?"

SIR SAMUEL HOARE: "We contemplate that 1 to 48 will be the normal field over which the States will surrender their powers. The actual detail of the Treaties must be considered, each on its own

* See Appendix IX.

merits, always with this reservation in mind, that if a State attempts to make reservations that would make its entry of no value to the Federation, then, obviously we must have the power of refusing to accept an entry upon those terms."

"Then does the Secretary of State visualise any particular State which will accept, say, 1 to 40 instead of the subjects 1 to 48?"—"I should hope not, but there will be variations, no doubt, as to the exact manner in which the States undertake these Federal duties. There, again, it is a question to be considered when the Treaties of Accession are considered and, once again, if the State attempts to make terms that would make its entry of no great value to the Federation then there must be the power of refusing the entry of that State."

Practically the same questions (6723-4) were asked by Sir Akbar Hydari on July 18, 1933.

"Is it not that the difference will be within very narrow limits because the Crown will see, before it allows any State to accede, that it concedes the minimum quantum of its powers to the Federation?"

SIR SAMUEL HOARE: "Certainly".

"So that the variation will be very little between different States so far as the amount of power that they concede is concerned?"

SIR SAMUEL HOARE: "Certainly".

A number of purely academic issues will no doubt be raised in future by legal pedants regarding reactions on the doctrine of paramountcy of the surrender of States' sovereignty to the Federation. Within the Federal domain the representative of the Crown will not interfere, except in discharge of his special responsibility and other obligations enjoined upon him by the Act. But in non-Federal subjects his authority will remain unimpaired. In actual practice there is a possibility of the Federal Ministry operating even in the sphere of paramountcy with the consent and support of the Viceroy, in the same way as the prerogative power of the Crown is employed by English Ministers. The analogy must not be carried too far, for the distinction between Federal control and paramountcy power is vital and essential in the Act. But the progress of the new Federation will in course of time enable the Federal Government through the Viceroy to extend its jurisdiction in many non-Federal spheres, and the difference will, in course of time, be reduced.

Theoretically, a State might surrender such restricted powers to the Federation that the ruler's relations would be almost exclusively in future with the representative of the Crown in India, whereas another State might surrender wider powers, and to that extent the ruler's relation with the Federal Government and the Governor-General will be more extensive. But in actual practice the difference will be extremely small, as the Crown will insist on uniform lists of subjects, though the possibility of variation in a few cases cannot be ignored. Again, complications are bound to arise when the measures are proposed by the Federal Government acting within its constitutional rights in relation to the Federal subjects which might prejudicially affect the rights of a State. Incidents have occurred recently in some States, such as disturbances in Alwar and Kashmir which have produced serious repercussions in the Indian Provinces. Such occurrences are liable to produce a cleavage between an Indian Province and the neighbouring State. In the practical sphere of administration such difficulties cannot arise, for the simple reason that no Government can ever allow its administration to be paralysed. It must act or abdicate.

The new Act confers on the Viceroy power to take action under section 12 (1) (g). It lays down that the protection of the rights of any Indian State or the rights and the dignity of the ruler thereof is his special responsibility. In the case of a Province the Governor, under section 52 (d), (f), is charged with the same duty in the sphere of his special responsibility. In the Legislature discussion of such a matter would probably be barred by the Speaker.

Viceroy's Executive Council.—The members of the Viceroy's Executive Council are appointed by the Crown normally for a period of five years. The Commander-in-Chief is ordinarily a member of the Council and has rank and precedence next after the Governor-General. The Executive Council consists of six members besides the Commander-in-Chief and the Governor-General. Of these six members, three are Indians. The Governor-General presides over meetings of the Council and the decisions of the majority prevail, though the Governor-General has a casting vote in the event of an equality of votes and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India or any part thereof, overrule the Council. The Government of India is not responsible to the Indian Legislature but

only to the Secretary of State, and if the Governor-General in Council is satisfied that any demand for supply which has been rejected by the Assembly is essential to the discharge of his responsibility, he has power to act as if it had been assented to, notwithstanding the refusal of the demand or any reduction in its amount by the Assembly. The Governor-General is also empowered in case of emergency to authorise such expenditure as may be necessary for the safety or tranquillity of British India. The independence of the Executive is complete and undisguised while the Legislature is deprived of any control over Ministers, and lacks all the essential elements of a sovereign legislature, though it can pass resolutions and discuss the budget.

Defects of Irresponsibility.—From the point of view of legal theory the existing Legislature is an advisory body empowered, no doubt, to discuss and debate all questions that come up before it, but debarred from all effective authority by the fact that the Government is not responsible to nor removable by it. While its legal powers have remained fixed and have been rigid since 1919, its moral authority and power have substantially increased. It has mobilised Indian opinion, trained a number of brilliant parliamentarians, expressed the Indian national programme on all important occasions, and attracted to itself all the talent, character and experience of non-official Indians. It speaks with authority and vigour on questions which deeply move the sentiment, or seriously affect the economic interests, of India. It has grown in stature, reputation and influence during the last fifteen years. It is not surprising to find that there have been frequent deadlocks between the Executive and the Legislature. The framers of the 1919 Act intended to make the Central Government strong, but the logic of circumstances has placed the Central Government in a very weak position. The lessons of Canadian history are writ large upon India. An able and resourceful opposition seriously impaired Government prestige, and the grey monotony of administration has been frequently varied by dramatic deadlocks and emotional storms.

The Executive Government seemed powerful on paper and in almost every sphere—legislative, administrative and financial—its will was irresistible. But its moral authority was undermined by frequent disputes with the Legislature on many important subjects. The latter, deprived of the opportunity of sharing the burden

of responsibility, inevitably tended to act in an irresponsible manner, as it knew its policy of negativism, amounting sometimes to obstruction, would not paralyse administration so long as the Viceroy's power of certification remained on the Statute Book. Hence it could indulge in a series of motions and resolutions which involved almost continuous Government defeats without exposing the administration to imminent risks. If it refused the grant for a particular department, the Executive promptly restored it, on the ground that it was essential to the Government. The defeat meant little to the Government.

In 1927–30 the Legislative Assembly, owing to the predominance of the Congress party, made *quasi*-parliamentary government impossible and the Viceroy was obliged on various occasions to have recourse to his emergency powers. The present Assembly, elected in 1934, is repeating this performance, as the Congress is again the largest single party in that House. The Government is now exposed to attacks from various fronts and has often sustained defeats on important issues. If it has been able to ward off attacks, this has been rendered possible with the help of forty nominated and official members in a House of 145. If such a state of affairs had continued, the feeling of hostility to Government measures would have become permanent, and it would have been impossible to maintain even a semblance of Constitutional Government. A Government is strong only in proportion to the amount of support which it derives from the public, and for this reason shrewd and experienced Englishmen recognised the need for a certain amount of responsibility in the Centre. The failure of the Simon Report was due mainly to its neglect of this demand, and, instead of recommending a measure of responsibility for Indians in the Central Government, it buttressed the Government by proposing a series of additional powers which would have tended merely to exacerbate Indian feeling and encourage all the lawless elements in the land to smash the new structure. Few non-official Indians would have attempted to support such a fabric.

Lord Irwin must be given the credit for grasping the inadequacy, nay, the futility, of the recommendations of the Simon Commission concerning the Centre. He made a complete departure from precedent by publishing his historic declaration in which he announced Dominion status to be the goal of India. The Government of India's

Despatch on Constitutional Reforms in 1930 was an immense improvement on the Report of the Simon Commission. It provided for responsibility by convention and recognised the need for advance in the Centre. It was necessarily confined to British India, and was consequently of little direct value to the delegates to the First Round Table Conference. It was the Federal Structure Sub-Committee of the First Round Table Conference which took the lead in 1930 by sketching an outline of Central responsibility which has remained substantially intact to the present day.

Foundations of Federation.—It made the basic assumption that the "Constitution will recognise the principle that, subject to certain special provisions more particularly specified hereafter, the responsibility for the Federal Government of India will in future rest upon Indians themselves". The Committee suggested that in acting upon this principle, following the precedent of all Dominion Constitutions, the Constitution Act should provide that the Executive power and authority shall vest in the Crown or in the Governor-General as representing the Crown, and that there shall be a Council of Ministers appointed by the Governor-General and holding office at his pleasure to aid and advise him. The Governor-General's Instrument of Instructions will then direct him to appoint as his Ministers those persons who command the confidence of the Legislature, and the Governor-General, in complying with this direction, will follow the convention firmly established in constitutional practice throughout the British Commonwealth of Nations of inviting one Minister to form a Government and requesting him to submit a list of his proposed colleagues. The Ministers will retain office only so long as they retain the confidence of the Legislature. It was, however, agreed by almost every delegate that complete responsibility cannot be established in the Central Government at one step and a period of transition must ensue during which the Governor-General should be responsible for defence, ecclesiastical administration and internal relations, including relations with Indian States outside the Federal sphere, and that in certain matters the Governor-General must be free to act on his own responsibility and must be given the necessary powers to implement his decisions.

Governing Principles underlying the new Act.—These were the governing principles enunciated by the Committee, and the 1935 Act embodies them faithfully. It lays down that there shall be a

Council of Ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his function except in so far as he may be under the Act required to exercise his functions or any of them in his discretion. The Governor-General will exercise his individual judgment in dealing with the advice of his Ministers.

The difference between the Provincial and the Federal Governments consists in the fact that the Council of Ministers in the Provinces will be entitled to tender advice to the Governor in all matters which deal with the provincial administration, and do not impinge on his special responsibility. At the centre there will be transferred departments in charge of Ministers, while the reserved departments will be administered by the Governor-General, and for them he will be responsible, through the Secretary of State, to Parliament. He will be empowered to appoint, at his discretion, not more than three counsellors. The choice of the counsellors will be unfettered, and there is nothing in the Act which prevents a Minister from being appointed counsellor. In the latter case he will, of course, have to vacate his seat in the Legislature. The Governor-General will also appoint a financial adviser to assist him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation, and he will give advice on other financial matters on which he may be consulted. As the Governor-General will be responsible for the administration of Reserved subjects, he can, under section 12 (1) (h), adopt effective measures, financial and otherwise, to secure the discharge of his responsibility with regard to these subjects, or on matters on which he is called upon to exercise his individual judgment.

The estimate of expenditure on the Reserved departments for the next financial year will be treated in a manner analogous to the consolidated fund charges in England. Section 33 gives effect to this principle on the basis of recommendation by the Federal Structure Committee of 1930, and provides that the Governor-General, in laying the annual financial statement or budget before the Legislature, shall show separately (1) sums required to meet expenditures described by this Act as expenditure charged upon the revenues of the Federation, and (2) sums required to meet other expenditures. In the first list there is expenditure on defence, ecclesiastical affairs, external affairs, salary of Governor-General, debt charges of the Federation, salaries of Ministers, counsellors,

Advocate-General, Chief Commissioners and staff of Financial Adviser; salaries, allowances and pensions payable to Judges of the Federal Court and pensions payable to Judges of the High Court, and a few other items. This expenditure will not be submitted to the vote of the Legislature, though most of these items will be open to discussion by the Legislature.

Provision is also made for an Advocate-General of the Federation. The Advocate-General must possess the qualifications of a High Court Judge. It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India, and, in a case in which Federal interests are concerned, in all courts in any Federated State. The appointment of the Advocate-General will be made by the Governor-General in his discretion. This section removes the existing anomaly whereby the Advocate-General of Bengal acts as the legal adviser of the Government of India.

It is sometimes objected by constitutional purists that the Act does not guarantee responsible government in the Centre. The criticism completely overlooks the point that responsible government is nowhere guaranteed by a statute in the English Constitution, nor is it embodied in any Colonial Constitution Act. The Irish Free State Act is the only exception to the rule.

Sections 9 to 11 of the British North American Act, 1867, sections 8 and 9 of the Union of South Africa Act, 1908, sections 61 and 62 of the Commonwealth of Australia Constitution have practically the same form. In all of them executive power and authority is vested in the Governor-General and he is "aided and advised" by the Council of Ministers. In none of them is responsibility given statutory expression. It is through the Instruments of Instruction that the reality and vigour of the parliamentary system are ensured in the Dominions, and this is proposed to be done in the Instruments of Instructions that will be issued to the Governor-General. The responsibility of the Executive to the Legislature is, however, limited in several important respects. It is not a complete responsibility owing to factors which formed the subject of prolonged discussions in many conferences. The Act excludes certain subjects

from the purview of Ministers and places them under the direct administration of the Viceroy.

Nature of Central Responsibility embodied in the Act.—The essential features of the Central Executive in the new Act may be analysed here in a few words. The principle of responsibility of the Executive to the Legislature was accepted by the First Federal Structure Sub-committee. It pointed out, however, the need for a "transition period" during which certain subjects will be reserved. These subjects are defence, ecclesiastic affairs and external affairs. They are subjects in which Imperial interests are vitally involved, and Indians have been given comparatively little training or opportunity in their administration. The Governor-General will administer these departments, and they will be outside the ministerial sphere. It is necessary to point out that the special responsibilities of the Governor and Governor-General do not constitute separate departments, nor do they indicate a sphere from which the action of Ministers is excluded. They are concerned with *purposes* and not with departments. Hence they may arise in any department and the Governor-General may be obliged to take action even in a department which is in charge of a Minister. It is true that Ministers will be entitled to give advice on their departments, but if the Governor-General thinks that his special responsibility is involved he will be entitled to act against their advice on his individual judgment. The words, "in his individual judgment", refer to action taken by the Governor-General in a sphere in which he would normally consult his Ministers, and his functions in the Reserved departments—in which no Ministers will be entitled to give him advice—will be exercised by him "in his discretion". His power and authority will be derived from the Constitution Act itself, but he will also exercise such prerogative powers of the Crown, which are not inconsistent with the Act, as His Majesty may be pleased to delegate to him. In relation to a Federated State the executive authority will extend only to such matters as the ruler has accepted as falling within the Federal sphere by his Instruments of Accession. There is to be a Council of Ministers chosen and summoned by the Governor-General to aid and advise him in the exercise of his powers conferred upon him by the Constitution Act other than his powers in the Reserved departments, and matters left by the Act to the Governor-General's

discretion. The function of Ministers will be to "aid and advise" the Governor-General. The constitutional position of provincial Ministers has been technically modified by the new Act. The Act of 1919 laid down that the Governor will be "guided by the advice" of his Ministers in all matters relating to transferred departments. The word "guide" has been replaced by the phrase "aid and advise".

Special responsibilities of Governor-General.—Section 12 specifies the Governor-General's special responsibilities:

"(1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say:

(a) The prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) the securing to, and to the dependents of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

(e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation [provisions relating to discrimination];

(f) the prevention of action which would subject goods of the United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(g) the protection of the rights of any Indian State and the rights and dignity of the ruler thereof; and

(h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in this direction, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken."

These matters are discussed in subsequent pages.

Instrument of Instructions to Governor-General.—Section 13 deals

with the Instrument of Instructions to the Governor-General:

"(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him."*

This section must be studied in conjunction with section 52 of the Act. The latter deals with the special responsibilities of Governors, and is necessarily confined to the range of provincial subjects. There is little difference between the two on principle. The principles which underlie "special responsibilities" of Governors and the Governor-General will be explained in a separate chapter. Here it is sufficient to indicate broadly the main features of the special responsibilities of the Governor-General. There are certain subjects which are necessarily outside the scope of a Province, and are reserved for the Centre. For these, the Governor-General has a special responsibility. He is charged with the duty of safeguarding the financial stability and credit of the Federal Government, but this obligation is not imposed on Governors, and Provincial Legislatures will have greater scope and wider powers in this as in other matters. This is based on the recommendations of the Simon Commission, who rejected the proposal to confer such a power on the Governor. Again, 12 (1) (h)—recited above—is not included in the Governor's special responsibility.

Governor's Special Responsibilities.—Both the Governor and Governor-General have a special responsibility for securing the peace and good government of excluded or partially excluded areas, and a further responsibility is imposed upon Governors to secure the execution of orders or directions lawfully issued to them under Part VI of the Act [Administrative Relations between Federation, Provinces and States] by the Governor-General in his discretion.

* See Appendix VIII.

Other differences in the powers of the two are due to the special requirements and needs of particular Provinces. The Governor of Central Provinces and Berar is responsible for allocating a reasonable share of the revenues of the Province for expenditure in Berar; the Governor of Sind has special responsibility for securing proper administration of the Lloyd Barrage and Canal scheme, while the Governor of a Province who is discharging any functions as agent for the Governor-General shall have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter.

Special Responsibility does not mean Special Department: Its Nature.—The field of special responsibility permeates the whole administration, and it is difficult to suggest any subject, whether in the Federal or the Provincial field, in which it may not emerge at any moment. It is not intended to be a field administered by separate departments with separate staff. The special responsibilities are duties imposed on the Governors and Governor-General which may emerge at any time in any field. They were described by Sir Samuel Hoare as signposts or labels indicating to the Governor-General, and incidentally to the Ministers, certain purposes the fulfilment of which the Governor is directed to secure, if necessary by refusing to be guided by the Minister's advice, wherever he considers that the advice tendered to him would be inimical to the fulfilment of these purposes; and if necessary, he can implement it by using special power in the domain of legislation and finance. It is, however, essential for the harmonious development of relations between the Governor-General and Ministers to assume that there will be no cleavage between the two and they will normally work in the closest harmony. If, however, occasion arises for enforcing his responsibility, he must be free to use them in a way that seems to him best suited to meet the situation. Until and unless the Governor-General is obliged to differ from his Minister in fulfilment of any special responsibility, the responsibility of Ministers for their departments remains unimpaired. The framers of the Constitution did not contemplate a struggle for power, or a tug-of-war between the two sides of the Government in the day-to-day administration of a transferred subject. In the great bulk of cases, mutual consultations should result in agreement and few questions would necessitate

the exercise of this power. It ought to be as painful to him to exercise it as it will certainly be disagreeable to his Ministers. There may be occasions when the Ministers may wish the Governor-General to act. Agitation may occur on an issue in which the ministerial party may hold a strong opinion, and the Governor may be expected to take an independent and strong line of his own for the maintenance of law and order. The Ministers may be placed in a delicate position by the strong views of their party, and may welcome such an action, as it may extricate them from a difficult position. On the other hand, it may seriously impinge upon the Minister's power or programme, and in the latter case he will have no other alternative but to resign.

The Act contemplates that all members of the executive Government, both Ministers and heads of administration, will approach these problems in the spirit of partners in a common enterprise. Though Ministers will not be entitled to tender advice on the administration of reserved departments, which are within the field of the Governor-General's special responsibility, they ought to be consulted by the Governor-General. Government would become impossible if the ministerial and reserved departments were conducted in an atmosphere of jealousy and antagonism. The whole machinery would break down, if each side—the transferred and the reserved—stands up for its rights, and carries on a guerilla war. It is unlikely that practical men will ever trouble themselves about their strict legal rights with the pitiful tenacity of pettifogging attorneys, and an able Governor-General would do as Lord Willingdon did in 1920, in Madras, when he called together all the members of his Government and informed them that he would like dyarchy to be worked on the basis of unitary government. Conventions are bound to grow whereby the rigid distinction between the two parts of the Federal Government will be considerably relaxed in actual practice. The practice of joint consultation between members of the Executive Council and Ministers of a Province was enjoined in paragraph IV of the Instruments of Instructions to Governors issued after the Act of 1919, and delegates to the Third Round Table Conference expressed the hope that the principle of joint deliberation will be inserted in the new Instruments of Instructions. The Governor-General is accordingly directed in the Instrument of Instructions to encourage the practice of joint

consultation between himself, his Counsellors and his Ministers. A healthy convention fostered by the sedulous care of an enlightened and far-sighted Governor-General ought, in actual practice, to lead to unitary government on all points to which Indians have attached supreme importance—such as defence, fiscal autonomy and virtual responsibility of members of the Government to the Federal Legislature. It is, however, necessary to point out that both in matters which deal with reserved departments and in those in which special responsibility is involved legally, and in the last resort, the responsibility is and must remain that of the Governor-General alone. The Act is unambiguous on this point. Whatever may be the conventions, usages and practices which may be built up by experience, the pressure of public opinion and force of circumstances, the chain of legal responsibility is not only clear but complete. The Governor in the sphere of his special responsibilities is responsible to the Governor-General, who is responsible to the Secretary of State, who, in his turn, must carry out the policy of the British Parliament.

Sections 12 and 52 analysed.—A few points in connection with sections 12 and 52 deserve special notice. Section 12 (1) is very comprehensive and many interpretations have been put upon it. The first-named responsibility will enable the Governor-General or the Governor to take over the entire administration of a particular area in the event of a grave menace to peace and tranquillity. How should a grave menace be defined? Will an agrarian riot in the United Provinces, or the bare possibility of a riot, justify a Governor in taking over the administration of a district? Will the organisation of depressed classes in favour of temple entry in Nasik or the threat of such a demonstration be sufficient reason for the application of this provision? These questions are not theoretical. The Government at the present time has no difficulty in applying the necessary provisions of the Police Acts to prevent a breach of the peace. Such questions will, however, assume great importance when the police are transferred to Ministers who will be responsible to the local Legislature. *Then* the Governor has to decide whether the Minister in charge of the police has taken effective steps to meet the situation. He may, however, be obliged to consider whether he is called upon to exercise his special responsibility for peace and tranquillity of his Province, and may decide

against his Minister. He will naturally take such a drastic course only if persuasion and consultation have failed to bring about an agreement between him and his Minister. Ultimately he will be compelled to dismiss the Minister and appoint another. In such an event he will have no option but to maintain the law by exercising his special responsibility. Such cases will be, as they ought to be, extremely rare, otherwise the entire administrative machinery might be dislocated. There is, however, always the possibility of these crises arising. One thing is perfectly clear. If the Governor exercises his power frequently, he may impinge upon the proper function of his Minister. Difficulties may arise when his special responsibility for protection of minorities restricts his responsibility for preventing menace to peace and tranquillity of the Province.

Objections of British Indian Delegates.—The Memorandum of the British Indian Delegation to the Joint Select Committee suggested two limitations on the scope of this responsibility: (1) special responsibility should be confined to cases in which "grave menace" arises from subversive movements or activities leading to crimes of violence; (2) any action taken by the Governor should be confined to the departments of law and order. The Joint Select Committee rejected this proposal, as they contended that there are many branches of administration in which ill-advised measures may give rise to a menace to the peace or tranquillity of the Provinces.

The word "legitimate" was objected to by the British Indian delegates, who suggested that it should be more clearly defined. The objection was repeated by some speakers in the House of Commons, but it was felt by the Joint Select Committee as well as by Parliament that no other word would convey the same meaning. It includes not merely interests of minorities as defined by the Act, but also their fair and equitable treatment. Again, it was contended that "minorities" should be defined in the statute. Had this been done, the protection which the Governor is expected to give would have been considerably limited in its scope, and it would then have been difficult for interests and classes, as distinguished from racial or religious "minorities", to seek the Governor's protection. In these matters the Governor must be the sole judge in each case. In most cases he will not interfere, otherwise he will have to override the decision of his own Ministry. If, however, any

question involves issues of supreme importance, the Governor, being charged with the duty, must discharge his obligation.

Section 12. (1) (b) was recommended by the Federal Structure Sub-committee, who thought "that no room should be left for doubts as to the ability of India to maintain her financial stability and credit, both at home and abroad. It was, therefore, considered necessary to reserve to the Governor-General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were taken which would, in his opinion, seriously prejudice the credit of India in the money markets of the world." The subsection embodies this conception.

The White Paper proposals of the Government contained a list of principal existing rights of officers appointed by the Secretary of State for India as well as a list of principal rights of persons appointed by authority other than the Secretary of State in Council. Part X of the Act deals comprehensively with various grades of public services and is exhaustively discussed in the chapter on this subject. Subsection (d) is designed to protect the public servants or their dependents from infraction of rights guaranteed to them in the Act.

Chapter II, Part V of the Act deals with provisions with respect to discrimination. Subsection (e) vests in the Governor-General the power to secure in the sphere of "executive action" purposes and objects which sections 111-121 secure in the sphere of legislation. It vests the Governor-General with executive power to enforce the provisions relating to the prevention or discrimination of British goods by the Indian Legislature and other bodies. The reader is referred to the chapter on this subject for details.

On subsection (f) the Joint Select Committee remarked: "Imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions, and it will be his duty to intervene only if the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of India but with the object of injuring the interests of the United Kingdom". The preceding

subsection (e) is limited to the sphere of executive action. This subsection confers greater power, but this power is to be exercised only to prevent any action which would subject goods of United Kingdom or Burmese origin to discriminatory or penal treatment.

An example of a case under (g) is the organisation of agitation against a neighbouring State or such other action by residents of British India as may prejudicially affect the peace and tranquillity of that State.

Subsection (h) is comprehensive and gives ample power to the Governor-General to carry into effect his obligations in the sphere of any special responsibility. A corresponding power is given to Governors in 52 (11) (g).

Instruments of Instructions: their Importance.—The Instruments of Instructions * indicate the manner in which powers specified in the Constitution Act are to be exercised, and direct the Governor-General and Governor to develop conventions which will remove possibility of friction between the two halves of the Government. There were considerable discussions on this subject in the Joint Committee on July 11 and 13, 1933, in connection with Sir Samuel Hoare's evidence, and Lord Reading emphasised the point that the Instrument of Accession cannot add anything to an Act of Parliament, nor can it empower a subject to bring any action in a court of law. It cannot and does not create any new right. It merely interprets the way in which rights and obligations imposed by the Act are to be discharged by the executive heads of the Province or of the Federation. This is made perfectly clear in subsection (2) of section 13 (see *supra*) by which any act done by the Governor or Governor-General will not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him. Instruments of Instructions have played a notable part in the history of British Dominions in the development of responsible government and building up of conventions and usages which have bridged the gulf between strict legal theory and constitutional usage. They have reconciled a number of most important elements in the State by indicating the precise method to be pursued in securing substantial advance. The brilliant administration of Canada by Lord Elgin in the nineteenth century shows the vitality and vigour of the instructions and the success they

* See Appendix VIII.

achieved. Instruments of Instructions to Governors develop basic principles which, though not embodied in the Act, are to be kept in mind in the actual conduct of provincial administration.

In cases in which his special responsibility is involved the Governor is directed to take such action as he thinks fit, even if this means dissenting from the advice tendered to him by his Ministers. In making appointments to the Council of Ministers he is to select them in consultation with the person who is likely to command a stable majority in the Legislature and is to appoint those persons "who will be in a position collectively to command the confidence of the Legislature". The Governor shall, in the exercise of powers conferred upon him, be guided by the advice of his Minister unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by Act committed to him. He shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own. He is charged with the duty of safeguarding of legitimate rights of (1) minorities and securing them due proportion in the services; (2) the legitimate rights of members of public service ; (3) with the execution of provisions relating to discrimination and (4) safeguarding the interests of Indian States. He should ensure that the Finance Minister is consulted upon any proposal by any other Minister which affects the finances of the Province. He is to appoint persons in the Irrigation Department if in his opinion circumstances arise which render it necessary for him to do so in order to secure efficiency in irrigation. The Governor may reserve for the consultation of the Governor-General any Bill (1) the provisions of which would repeal or be repugnant to a parliamentary statute; (2) any Bill which so derogates from the power of the High Court as to endanger the position which that court is by the same Act designed to fulfil; (3) any Bill regarding which he feels doubtful whether it does or does not offend against the provisions forbidding discrimination. The Governor shall not stay proceedings in the Provincial Legislature in discharge of his special responsibility unless, in his judgment, the public discussion of the Bill will itself endanger peace and tranquillity. Finally, in making nominations to Upper Chambers in a bicameral Province, the Governor shall redress such inequalities of representation as might have resulted

from an election, and in particular to secure representation of women and scheduled castes in that Chamber.

The Instrument of Instructions to the Governor-General deals with most of the subjects covered by Instructions to the Governor, though it is necessarily concerned with a wider field. It reproduces the recommendations of the Federal Structure Committee regarding the financial stability of the Federation, and the proposals of the Defence Sub-committee, that the defence of India must to an increasing extent be the concern of Indian people. A paragraph in the Instruments of Instruction states that "the Governor-General will bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to our Indian forces or the employment of our Indian forces on service outside India". The Instructions direct him to avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own economic or fiscal policy, or restrict their freedom to negotiate trade agreements, whether with the United Kingdom or with other countries, of mutual tariff concessions provided the provisions of Chapter III of Part V of the Act are not infringed. The conditions regarding the consultation of the Finance Minister by other departments are most stringent in this Instrument, for besides the provision quoted already, the following is added, "No reappropriation within a grant shall be made by a Minister otherwise than after consultation with the Finance Minister: and in any case in which the Finance Minister is not consulted in any such proposal the matter shall be brought for decision before the Council of Ministers".

Another notable paragaph is the one in which an attempt is made to secure some control over the Army Budget. It is of special importance to Indians, for the army figured prominently in discussions in all the three Conferences, and paragraphs in the Instruments of Instruction were inserted only after considerable discussion, particularly in the Third Round Table Conference, as a concession to Indian feeling. It lays down that "the Federal Department of Finance shall be kept in constant touch by such arrangements as may prove feasible, and the Federal Ministry, and in particular the Finance Minister, shall be brought into consultation before estimates of proposed expenditure for the service of

Defence are settled and laid before the Federal Legislature". This embodies the general conclusions of the Third Round Table Conference on Defence.

Joint Consultation in Federal Government.—The Governor-General shall by all possible means encourage consultation with a view to common action between the Federation, Provinces and Federated States, and will secure the cooperation of Governments of Provincial States in the maintenance of agencies for research. The Governor-General shall not give his previous sanction to the imposition of surcharge on income tax until he has satisfied himself that all possible economies have been effected by the Federation. Regarding his assent to any provincial law which falls within the concurrent legislative law, the Governor-General shall have due regard to the importance of preserving substantially the broad principles of those Codes of Law through which uniformity of legislation has been secured.

This analysis of the Instruments of Instruction will show at a glance the important character of these documents. The Instruments of Instruction to the Governor-General embody the principles which have proved singularly successful in the working of dyarchy. In Provinces where joint consultation between Ministers and Executive Counsellors has been in vogue, the results have been excellent, and the administrative machinery has functioned smoothly. The Instrument of Instructions directs the Governor-General to keep these principles in view when setting machinery in motion. Collective responsibility of the two sides of the Government is essential to the smooth running of the machinery, and a wise Viceroy will act on this occasion, as Lord Elgin did in Canada in the nineteenth century. He would allow the unwieldy and extremely complicated machine to be run by the united team of Counsellors and Ministers and would intervene only if he was convinced that without his interference administration would break down, or grave harm would be done to any particular interest. His is a position of supreme responsibility, but, for that very reason, it is also a position of supreme honour and opportunity. The Instrument gives him sufficiently wide powers to justify his acting as a constitutional Viceroy, and to carry on his work practically on the same lines on which Governments are now carried on in Canada or Australia. Undoubtedly there are some very important differences in the

structure of the Dominion and Indian Governments, but his special responsibility does not involve a separate department in the State, and a Governor-General who is always on the look-out for a special responsibility in everything done by his Ministers will end by dislocating the entire machinery. It is true that he will be ultimately responsible to the Secretary of State for this as well as for other duties imposed upon him by the Act. But it is no less true that his responsibility for working the new Constitution in a way that will make it acceptable to the best elements in the country is no less important and essential.

Governors will be "aided and advised", and not "guided", by their Ministers.—The Act of 1919 required the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he saw sufficient cause to dissent from their opinion. By the present Act the Governor will, in accordance with section 50, be simply "aided and advised", and not "guided", by the Council of Ministers in the exercise of his functions except in so far as he is by the Act required to act in his discretion. No doubt, from the point of view of actual practice and administration, the difference is slight, as in very few Constitutions are the Governor's relation to his Ministers precisely defined, but the Act of 1919 created a precedent, and the omission of the word "guided" is likely to blur the reality of ministerial responsibility and influence.

The Act provides that the draft Instruments of Instruction shall be approved by the two Houses of Parliament. This, as pointed out by Lord Hailsham, was an unprecedented concession to parliamentary control. Hitherto, Instruments of Instruction had been issued by the Ministers under the prerogative powers of the Crown. Parliament was now asked to undertake a responsibility which it had rarely exercised before and give its consent to any Instrument that might be prepared by the Executive. It cannot be issued until it is approved by both the Houses of Parliament. The Instrument can thus be varied, and its flexibility and elasticity may make it a powerful instrument for extending the scope of responsibility and removing restrictions on the power of provincial Ministers.

Reserved Departments.—Under the Act, the Governor-General will act on his discretion in respect of defence and ecclesiastical affairs and external affairs. The Memorandum of the British Indian

delegates pointed out that this would deprive Ministers of the influence over the administration of the army which at the present time Indian members of the Governor-General's Council are able to exert. They proposed (1) that the Governor-General's counsellor in charge of defence should be a non-official Indian, and preferably an elected member of the Legislature or a representative of one of the States; (2) that the control now exercised by the Finance Member should be continued; (3) and that all questions relating to army policy and the annual Army Budget should be considered by the entire Ministry, including Ministers and Counsellors. The Joint Select Committee rejected the first plea on the ground that the choice of the Governor-General should be unfettered. Regarding the other points, the Joint Select Committee pointed out that the White Paper contained a proposal to the effect that the Governor-General should consult Federal Ministers before the Army Budget is laid before the Legislature. Effect has been given to this in the Instruments of Instruction.

Regarding external affairs, the British Indian Memorandum pointed out that the making of commercial agreements with foreign countries is essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor-General. The Joint Select Committee replied that agreements with foreign countries are made through the Foreign Office, but when a commercial agreement is negotiated the Foreign Office must consult and cooperate with the Board of Trade. Similar arrangements will be made in India.

Certain sections of Indian public opinion have on various occasions objected to a substantial increase in the ecclesiastical establishment, and urged a certain limit to the expenditure that might be incurred under this head. The Act meets this demand, and the Joint Select Committee recommended that the Act should specify a maximum figure beyond which the annual appropriation for ecclesiastical expenditure should not go. Subsection (3) of section 33 accordingly lays down that the "sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed 42 lakhs of rupees, exclusive of pension charges".

Section 14 lays down that in so far as the Governor-General is by or under the Act required to act in his discretion or exercise his individual judgment, he shall be under the general control of and

comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State.

All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General. He shall make rules for the more convenient transaction of business of the Federal Government. The rules shall include provisions requiring Ministers and Secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a Minister to bring to the notice of the Governor-General, and the appropriate Secretary to bring to the notice of the Ministers concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General. In the discharge of these functions, the Governor-General shall act in his discretion after consultation with his Ministers.

Federal Legislature: Its Size.—The Act provides for a Federal Legislature which shall consist of "His Majesty represented by the Governor-General and two Chambers, to be known respectively as the Council of State and the House of Assembly". The Council of State will consist of 156 representatives of British India and not more than 104 representatives of the Indian States; and the Federal Assembly will consist of 250 representatives of British India and not more than 125 representatives of Indian States. The method of their election is discussed in the chapter on Composition and Franchise of Legislatures. The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of its members shall retire every third year in accordance with provisions outlined in the Act. The life of the Federal Assembly will be normally for five years, though it may be dissolved by the Governor-General. There has been a striking change in opinion on the size of the Federal Legislature. The First Round Table Conference decided that the Lower Chamber should consist of 250 and the Upper Chamber of from 100 to 150. At the Second Round Table Conference the numbers arrived at were—Lower Chanber, 300; Upper, 200. Lord Lothian's Franchise Committee recommended 450 for the Lower House. The White Paper

fixed 260 for the Upper and 375 members for the Lower House, and these figures have been retained in the Act. Another striking change has taken place on the vexed question of direct or indirect election to the Lower Chamber. The two Round Table Conferences as well as Lord Lothian's Committee recommended direct election and the White Paper made similar provision. But the Joint Select Committee subjected this proposal to very keen criticism, and the Bill recommended indirect election to both the Chambers. There was a thorough discussion of these problems in the House of Commons, but the Government stuck to its position, and the Lower House passed the original provisions. The fight was carried to the Upper House, where a compromise was arrived at whereby provision was made for indirect election to the Lower House and direct election to the Upper.

There are elaborate rules with regard to the representation of Indian States in the Council of State and the Federal Assembly. The details will be found in schedule I of the Government of India Act. The size of the Federal Legislature was discussed in various Conferences and Committees, and the discussion revealed a wide difference of opinion. A section of Indian States pleaded for a single Chamber, while representatives of smaller States fought for a large Upper House, so that they may be able to secure representation. Some desired a Lower Chamber of 700 to 900, while others asserted that a unicameral Legislature of 100 members would suffice for the small number of Federal subjects with which the Assembly would be called upon to deal. It was contended that a small Upper Chamber would be far more efficient, and some went so far as to advocate a unicameral Legislature. It was argued by this group that the work of the Federal Chamber would be essentially limited and a small and efficient body would be sufficient for the purpose. On the other hand, it was argued by a very powerful group that in all Federations two Chambers were a vital necessity, as the Upper Chamber represents the units and the Lower House the people of the Federation. Various objections were raised to the numbers proposed in the White Paper, but no change was made in the size of the two Houses.

Arguments in favour of a large Legislature.—The reasons for this may be briefly summarised here. (1) Need for giving representations to minorities and special interests. If the Upper Chamber were

reduced in size the representations of such interests would be so small as to be almost negligible and useless. Minor minorities and special interests would have been submerged if a small Legislature had been constituted for a vast country like India.

(2) But the strongest arguments were advanced by the smaller States. They insisted on individual representation in the Legislature, and objected to their absorption in artificial groups formed for the purpose of representing a number of such States. At certain stages of discussions the cleavage between the small and large States assumed serious proportions. Indeed if the original proposal to limit the Upper Chamber had been accepted it was feared that very few small States would join the Federation. This was a clear case of an impeccable constitutional principle being modified by the realities of the situation. The complicated arrangements for the representation of larger States, and the grouping of small States into larger units for the purpose of representation in both the Chambers, will be found in the First Schedule to the Act. They show ingenuity and skill, and the drafting must have considerably taxed the diplomacy of the Political Department of the Government of India.

(3) The maintenance of communal proportions in British India was a condition precedent to the success of the new Constitution, and the proportions to be effective must represent substantially a large number of minorities. A representation in which minorities were given a small fraction would be useless. Nor is it possible for minor minorities to be represented by groups, as has been done in the case of small States.

(4) It was agreed by most of the delegates that the size of the Lower Chamber must be substantially larger than that of the Upper Chamber. Most of the States, however, insisted on vesting the Upper Chamber with equal powers, even in the sphere of finance. If the Upper Chamber was to play its due part in the joint sessions of the two Houses, and retain the position assigned to it in the Constitution, its size must be substantially large, in order that in quality and numbers it may effectively influence deliberations in a joint session. If it is relatively so small, it would be virtually overwhelmed by the larger body.

It is probable that in the future Federal Legislature parties will be formed on a non-communal basis, on the basis of a national pro-

gramme in which the petty and trivial distinction between British Indian and Indian States will disappear. The representation of the Indian States in the Legislature involved extremely delicate negotiations, and the task was beset by many pitfalls. There are fierce rivalries, dynastic, personal and in some cases economic, in the States.

Cleavage among Indian States.—It became clear in the Second Round Table Conference that it was hopeless to expect an agreed solution among the States without the intervention of the paramount Power. This the paramount Power undertook. The allocation of seats among the States has been determined, in the case of the Council of State, by the relative ranks and importance of the States as indicated by the dynastic salutes and other factors: and in the case of the House of Assembly in the main on the population basis. The scheme seems to have met with a large measure of support by the States. Naturally it was bound to arouse a certain amount of heart-burning and dissatisfaction, but, taken as a whole, the arrangement appears to be equitable. Provision is made for the pooling within groups of States of the representation allotted to them individually with a view to securing a form of representation more suited to their common interests. It was suggested by some States that provision should be made in the Constitution Act for vacation of a seat by a member of the Legislature appointed by the ruler of a State, if called upon to do so, by notice in writing from the ruler. This would have made a complete departure from the laws and conventions of the Constitution. Every member is appointed on a fixed term and cannot be called upon to resign unless, of course, he is disqualified by standing orders of the House. The Joint Select Committee wisely rejected this demand on the ground that there should be no difference in the tenure of a seat in the Legislature between representatives of Indian States and British India.

Will States' Representatives vote on purely British Indian Subjects?—British Indian representatives in the Round Table Conferences had drawn pointed attention to an anomaly which is inherent in the Act. They will not be allowed to discuss any question concerning any Indian State in the Federal Legislature, except, of course, in so far as the administration of subjects for which the States have acceded to the Federation necessitates it. The representatives of Indian States can, and in some cases undoubtedly

will, determine the policy not merely of the Central Executive and Legislature, but also the organisation of parties in British India. Constant pressure will be exercised by the States on almost every phase of British Indian policy and programme, and they, backed by their rulers, can create considerable influence in British India. The British Indian representatives discussed this question for nearly four years, and made constructive proposals to obviate this difficulty. The States replied that, while they had no intention to interfere in the domestic issues of British India, they refused to be bound down by specific provisions in the Act, as in some matters, such as the maintenance of the Federal Ministry. They could not remain passive spectators, as upon their participation and intervention might depend the fate of the Federal Ministry.

The British Indian representatives in their Joint Memorandum suggested: (1) that in divisions on a matter concerning solely a British Indian subject the States' representatives should not be entitled to vote; (2) that the question whether the matter solely related to a British Indian subject or not should be left to the decision of the Speaker of the House, which should be final; but (3) that, if a substantive vote of "no confidence" was proposed on a matter relating solely to a British Indian subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of the Ministry formed on a basis of collective responsibility; (4) that if the Ministry was defeated on a subject which deals exclusively with British India it should not necessarily resign. The objections to these proposals were obvious. While it is true that on a purely British Indian subject the States should not, and probably would not, vote, no hard-and-fast rule could really be laid down beforehand, as discussion on a subject may ultimately develop into a vote of no confidence in the Ministry, and the States will then be expected to take part in voting. The remedy for unnecessary interference of Indian States in the domestic issues of British India is obvious. If they take too active and keen a part in such matters they will be exposing themselves to agitation in their own States, organised not only by British Indians but also by their own subjects.

Suggestions of Joint Select Committee.—The Joint Select Committee suggested that the matter should be regulated by common sense and by the growth of constitutional practice and usage. They

referred to the practice in the House of Commons where all Bills which relate exclusively to Scotland and are committed to Standing Committees are referred to a Committee consisting of all the members representing the Scottish constituencies together with not less than ten nor more than fifteen other members. They thought that a provision on these lines might be found useful and the Constitution Act might require that any Bill relating to concurrent subjects (List III of Legislative List) should, if it extends only to British India, be referred to a Committee consisting either of British Indian representatives, or a specified number of them to whom two or three States' representatives could, if it should be thought desirable, be added. Similar suggestions had been made in Committees of the First and Second Round Table Conferences. A difficulty will, however, arise if an issue emerges in which British India and the Indian States are equally interested. The suggestion of the Joint Select Committee is based on the procedure of the House of Commons and is workable. Previous attempts to deal with similar situations in a Constitution Act have not been uniformly successful. Mr. Gladstone's experience of the second Home Rule Bill made this perfectly clear. He proposed that a certain number of Irish members should continue to sit in the House of Commons, but should not be entitled to vote on issues in which Englishmen alone are interested. This "in" and "out" policy was subjected to scathing criticism. The only country where such a provision seems to have worked successfully was Hungary before the war. In the Hungarian Parliament, Croatian deputies were not allowed to vote on purely Hungarian issues.

Legislative Sessions.—The Governor-General may in his discretion from time to time—

(a) summon either Chamber to meet at such time and place as he thinks fit;
(b) prorogue the Chamber;
(c) dissolve the Federal Assembly.

Every Minister, every Counsellor and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of either Chamber, any joint sitting of the Chambers, any Committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote. Every member of either Chamber shall, before taking his seat, make and

subscribe before the Governor-General or some person appointed by him an oath in the form set out in schedule IV of the Act. A novel provision is made in subsection 3 of section 25, which lays down that if for sixty days a member of either Chamber is, without permission of the Chamber, absent from all meetings thereof, the Chamber may declare the seat vacant; provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued or is adjourned for more than four consecutive days. This was intended to meet an evil to which frequent attention was drawn in the Provincial and Central Legislatures.

Disqualifications for Membership.—The list of disqualifications may be briefly summarised. A candidate will be disqualified from being chosen as such, or being a member of either Chamber (a) if he holds an office of profit under the Crown in India, other than an office declared by an Act of the Federal Legislature not to disqualify its holder. [From this category the following are excluded: (1) Provincial and Federal Ministers; (2) persons serving a State, even though they are members of the services of the Crown in India and retain all or any of their rights as such]; (b) if he is of unsound mind; (c) if he is an undischarged bankrupt; (d) if he is guilty of corruption or illegal practice relating to elections; (e) if he has been sentenced to transportation or imprisonment for not less than two years unless a period of five years has elapsed since his release; (f) if, having been nominated as a candidate for the Federal or Provincial Legislature, he has failed to lodge a return of election expenses. No person shall be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or imprisonment for a criminal offence. A novel provision is introduced for the first time in India under which, if a person sits or votes as a member of either Chamber and is not qualified, he shall be liable in respect of each day on which he sits or votes to a penalty of five hundred rupees, to be recovered as a debt due to the Federation.

These provisions are designed to meet a few difficulties which have arisen since the Act of 1919. The provision declaring a person incapable of being chosen a member while he is serving a sentence of imprisonment is intended to remove the difficulties which proved a source of constant trouble to the Government in 1934. Mr. Sarat Chandra Bose was elected a member of the Assembly during his

detention as an alleged terrorist. The law as it stood did not prevent his election, but being a prisoner he could not take his seat. There is no relaxation of the rule relating to the persons convicted and sentenced to imprisonment for two years or more. It was urged by Indian delegates that persons who were guilty of crimes not involving moral turpitude should be allowed to stand for election. This would enable a large number of persons who had been sentenced for political offences to seek election. Some concession was, however, made in the House of Commons, when Sir Samuel Hoare moved an amendment limiting the application to cases where imprisonment had been imposed for two years. This would, according to Sir Samuel Hoare, enable a number of civil disobedience prisoners to seek election. The provision whereby Government servants who are deputed to serve in Indian States will be permitted to become members of Indian Legislatures is of great importance, and may modify the character of the Assembly. Under this section States can appoint members of the Political Department or other British Indian service who had been deputed to them to act as their representatives in the Legislatures.

Section 28, subsections (2), (3), (4) and (5) deal with the privileges of the Federal Legislature and are entirely new. Subsection (1) is practically a reproduction of the Act of 1919. There shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof; no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature or any report, paper, votes or proceedings.

Privileges of Indian Legislatures.—The actual experience of the working of the reformed Legislatures showed the need for adequate privileges for these bodies, if they were to maintain their dignity and prestige. A Bengal member applied for an injunction in the High Court against the President of the Bengal Legislative Council, restraining the latter from including a supplementary estimate in the agenda of a meeting of the Council. Neither the Central nor the Provincial Legislatures were invested with sufficient powers to ensure obedience to their order. The President had no control over the police that were posted in the premises. The President of the Assembly, Mr. Patel, arranged a compromise with Lord Irwin on a

few outstanding points when the Legislative department was entirely a department of the Government of India. This was a substantial gain so far as control over the building was concerned. In the Provincial Legislatures the old system continues and the office of the Provincial Legislature is part of a Government department. Again, there is no law which prevents a person from bringing any action against the President of any Legislature for anything done by him in that capacity. The courts will have to decide in each case whether the President has exceeded his powers as chairman. He had practically the same power as the chairman of any deliberative assembly except that no person can be taken to account for anything said by him in the Legislature. The powers and privileges enjoyed by the British House of Commons are not vested in Indian Legislatures *ipso facto*, and courts will have no cognisance of such powers unless and until they are expressly conferred by a parliamentary statute. Practically all Dominion Parliaments have been expressly given this power by British Parliament. Legally the Indian Legislatures had, though in a limited form, the right of any assembly to secure order in its proceedings.

The matter was discussed by the Reforms Enquiry Committee in 1924 and it made recommendations for a few minor changes. In 1925 the United Provinces Legislative Council passed a resolution, moved by the writer, recommending the Government to take effective steps for securing the privileges of the Council. The Constitution Act has removed anomalies and conferred powers on Legislatures which are ample and effective. Subsection (2) of section 28 provides that the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by the members of the Indian Legislature. This is based on the analogy of the Act passed in many British Dominions, such as the Commonwealth of Australia, Northern Ireland, the Transvaal and the Orange River Colony. Subsection (3) makes it clear that nothing in the Act gives either Chamber or any Committee or officer of the Legislature the status of a court or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. Provision may be made by an Act of the Federal Legisla-

ture for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee to do so. It is provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, servants of the Crown in India, and safeguarding confidential matter from such disclosure, as may be made by the Governor-General exercising his individual judgment. Subsection (5) provides that the privileges enjoyed by members under subsections (1) and (2) will also be enjoyed by Ministers, Counsellors and the Advocate-General.

Joint Sittings of the Chambers.—A provision is made for joint sittings of the Chambers if—

(1) the Bill is rejected by either Chamber; or

(2) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(3) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent.

If at the joint session of the two Chambers the Bill with such amendments, if any, as are agreed to in joint session, is passed by a majority of the total number of members present and voting, it shall be deemed, for the purpose of this Act, to have been passed by both Chambers. The Governor-General has the right to return the Bill to the Chambers, requesting them to reconsider it with such amendments as he may recommend. He may either assent to the Bill or withhold assent therefrom, or reserve it for the signification of His Majesty's pleasure (section 32). This is practically a reproduction of the existing provision, and calls for no comment. The procedure in financial matters elaborated in section 33 embodies the principles which have been applied since the reforms. Briefly, the Budget is divided into two parts. One part will contain expenditure charged "upon the revenues" of the Federation. It bears resemblance to the Consolidated Fund charges of the English Budget, though the analogy must not be pressed too far, as the origins of the two are different. The Legislature will not vote this part, though it will be allowed to discuss some of the items. The second part will be voted by the Legislature, and may be reduced or rejected. The section is as follows:

Section 33 deals with the details of the procedure that will be followed on the introduction of the budget, and voting for demands.

Presentation of Budget.—The Budget is to show separately (a) the sums required to meet the expenditure which is charged upon the revenues of the Federation, and (b) the sums needed to meet other expenditure. The former is specified in subsection (3) of this section and includes (a) the salary and allowances of the Governor-General and other expenditure relating to his office [no discussion in the Assembly will be allowed on this item]; (b) debt charges, which include sinking fund charges and redemption charges; (c) salaries and allowances of Ministers, of Counsellors, Financial Adviser, Advocate-General, Chief Commissioners and of the staff of the Financial Adviser; and (d) salaries, allowances and pensions payable to or in respect of judges of the Federal Court, and pensions payable to or in respect of judges of any High Court; (e) expenditure required for the Reserved departments, tribal areas and the administration of any territory in the direction and control of which the Governor-General is required to act in his discretion; (f) sums payable to the Crown under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas; (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (i) any other expenditure declared by the Act to be so charged.

Proposals for appropriation will, under sections 33 and 34, be grouped in three categories: (1) those which will not be submitted to the vote of the Legislature though they will be open to discussion, with the exception of items (a) and (f) of subsection 3, relating to the salary and allowances of the Governor-General and expenses of the Political Department respectively; (2) those which will be submitted; and (3) proposals, if any, which the Governor-General may regard as essential to the fulfilment of his special responsibility.

As pointed out above, subsection (3) of section 33 is based mainly on the recommendations of the Federal Structure Committee of the First Round Table Conference. They stated that "as the Governor-General will be himself responsible for the administration of Reserved subjects, he should not be dependent for the supply

required for them upon the assent of the Legislature, and the annual supply for their services should be treated, along with other matters, in a manner analogous to the Consolidated Fund charges in the United Kingdom. It would be necessary to empower the Governor-General to ensure that the funds required for these Reserved subjects are forthcoming."

Paragraph (f) of subsection (3) of this section includes the expenses of the Political Department and other matters connected with the rights and obligations of the Paramount Power, while paragraph (c) makes the salaries and allowances of Ministers non-votable. This is an important change, but it expresses a principle which has been frequently discussed in India. On the whole it must be confessed that it will tend to prevent instability and parliamentary log-rolling. It will not maintain an unpopular Minister in office, but it will check a tendency which was manifest during Budget debates in the Provincial Legislatures. It does not preclude censure motions, which can be moved either as substantive resolutions or in the form of token cuts during Budget debates. But it does preclude reduction of the Ministers' salaries to one rupee a month, and other similar proposals.

Section 34 permits the discussion of every item of expenditure included in subsection (3) of section 33, except paragraphs (a) and (f), and is a concession to Indian sentiment. Technically, discussion of some of these items, particularly the estimates of the Army department, was not possible without the permission of the Governor-General, and though such permission was invariably given, the Assembly was not competent to discuss without such authorisation. The section, for the first time, extends this right to discussion of other items. The Legislature will have the right to discuss and vote for demands for grants submitted to it.

Reasons for 34 (4) of the Act.—Subsection (4) of section 34 provides that "no demand for a grant shall be made except on the recommendation of the Governor-General". There is a similar provision dealing with the Provinces. The underlying principle is that no proposal for the imposition of taxation or for the appropriation of revenues, nor any proposal affecting or imposing any charge upon those revenues, can be made without the recommendation of the Governor-General. In other words, the Executive alone is responsible for these proposals. This is based on the procedure of

the British Parliament, and the system has worked there with great success. It ensures the responsibility of the Executive for proper expenditure of public money; it guarantees its accountability to the Legislatures and prevents violent dislocation of the Government programme by the idiosyncrasies of, and bargaining among, private members of the Legislature. If the Legislature were given the power to increase the Budget allotment and members were allowed to make radical changes in the budgetary arrangements, the financial estimates of the Government would be liable to so many fluctuations that the entire machinery would get out of gear. The procedure in the French Chamber is different, and members are allowed to change the budgetary arrangements by proposing increases in the expenditure of several departments. A great deal of "log-rolling" and wire-pulling is the result, and as each deputy is naturally anxious to please his constituents, items are inserted in the Budget against the policy of the Ministry. The Budget as it emerges from the Bureau of Finance is sometimes so different from the Budget as originally introduced that it is scarcely recognisable (see Stourm, *The Budget*). The British system, which has been followed in India, is undoubtedly sound. Legislative procedure in financial matters differs from the British procedure in one respect. In India there is no Appropriation Act, and proposals for appropriation of revenue which require a vote of the Legislature are submitted in the form only of demands for grants, and a resolution of the Legislature approving a demand is a sufficient warrant for the appropriation. In England, an Appropriation Act is necessary.

Relations of the Two Chambers.—The question of relations of the two Chambers of the Federal Legislature assumed special importance during discussion in the Federal Structure Sub-committee of the Second Round Table Conference, and important contributions were made by the leading delegates. The Indian States' delegates, as a whole, aimed at complete equality between the two Chambers, partly because they would have more representation in the Council, and would consequently be able to influence decisively the entire legislative activity of the Legislature, and partly because a body of elder statesmen, possessing knowledge, experience and wisdom, would exercise a moderating influence on the deliberations of the lower Chamber. The British Indian delegates insisted on the right

of the Lower Chamber to initiate money Bills and the exclusive right of that Chamber to vote supplies.

The Second Report of the Federal Structure Sub-committee stated that "the careful consideration we have given to the matter has led us to the view that nothing should be done in the constitution which would have the effect of placing either Chamber of the Federal Legislature in a position of legal subordination to the other. The two Chambers would be complementary to each other, each representing different, but we hope not antagonistic, aspects of the Federation as a whole." On two points, however, difference of opinion was too great to be reconciled. The Indian States' delegates contended that the Act should contain no provision which would prevent either Chamber from initiating, amending or rejecting any Bill, whatever its character. The British Indian delegates, however, contended that this principle should be subject to the exception that the right of initiating money Bills should vest in the Lower Chamber alone. The States' delegates were almost unanimously opposed to this view.

The weightiest argument urged by the British Indian delegates referred to the powers actually exercised by the Lower House in India under the Act of 1919, and the use it had made of these powers. It would be inequitable to deprive the House of this power after thirteen years of fruitful and beneficial activity. The Assembly, during the discussion of the estimates of the Government departments has been able to give a brilliant lead to the country, and the month of March is eagerly awaited by the intelligentsia of India, as it is during this month that the actions of the Government are subjected to a searching scrutiny and thorough investigation of its policy and administration. The whole country follows these debates with the liveliest interest, and a healthy public opinion has been gradually built up throughout India by the initiative and ability of our foremost leaders. The representatives of Indian States replied that, as supply will be needed for the common purposes of the Federation, there is no logical reason for depriving representatives of the Federal units in the Upper Chamber of a voice in voting supply.

Money Bills.—The White Paper proposed that money Bills should only be introduced in the Lower House, the Upper House having power to amend or reject them. In relation to demands for

grants the power of the Upper House was to be limited to requiring, at the instance of the Government, that any demand which had been reduced or rejected by the Lower House should be brought before a joint session. The Joint Select Committee amended this proposal by suggesting that the Upper House should have wider powers in relation to finance, and that it would be able not only to secure that a rejected grant is reconsidered at a joint session of the two Houses, but also to refuse its assent to any Bill, clause or grant which has been accepted by the Lower House. They made a distinction between the powers of the Federal Upper Chamber and Provincial Upper Chamber. The powers of the former should be almost equal, as their function was different from those of the latter, while the Provincial Upper Chambers were intended merely to delay and revise the work done by the popular House. The Federal Upper Chamber is expected to supply as important an element in the Federation as the Federal Assembly itself. The former will act simply as a brake on hasty legislation; the latter as an active and equal partner.

Voting Supplies.—Subsection 2 of section 34 regulates the relations between the two Houses and ends a prolonged controversy. It provides that estimates relating to votable expenditure shall be submitted to the Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein. Though the right of the Assembly to vote supply is conceded, it is so restricted and circumscribed that it will be of little practical utility, for the proviso to the section lays down that where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State unless the Governor-General so directs, and where the Assembly has assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; when, in either of such cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction. This section concedes only partially the claim put forward by the British Indian delegates. Demands for

grants will originate in the Assembly, and, so far, it has a priority over the Upper Chamber. The latter, however, can restore a demand that has been reduced or rejected by the Assembly. Its powers, except for initiation of money Bills, are coordinate with those of the Lower Chamber. If the Chambers differ with respect to any demand the Governor-General is to summon a joint meeting of the two Chambers, and the decision of the majority will prevail. The effect of these provisions may now be summed up. Demands for grants will be made to the Assembly and thereafter to the Council of State. If the Assembly rejects the demand it may be submitted to the Council of State by the Governor-General, and in case of disagreement between the two Chambers the matter will be decided at a joint sitting of the two Chambers. If the Chambers have not assented to or have reduced any demand, the Governor-General will "authenticate" that a certain proportion of this demand, not exceeding the amount of the rejected or reduced demand, would affect the due discharge of any of his special responsibilities, and the demand thus authenticated is not to be open to discussion or vote thereon.

The power to amend a money Bill is rarely exercised by any existing Federal Upper Chamber, and the closest analogy to this power is to be found in the Commonwealth of Australia Act of 1900. The Australian Senate is the most powerful Second Chamber in the British Dominions, but even that body has not been given co-equal power in the Constitution. It cannot amend money Bills, though it can make suggestions to this end. The analogy of the Senate of the United States of America does not hold good. Professor Laski regards it as the *sole* effective Federal Chamber in the United States. But this is partly because in one sphere, and that the most important—foreign affairs—it is practically a part of the executive. The functions of the Upper Chamber were placed on an equality with those of the Lower on the assumption that elections to it would be indirect and men of experience, wisdom and ability would be elected to it. Had the original proposal of the Joint Select Committee regarding the method of election to the Upper House been carried out there might have been some justification for giving the two Chambers equal powers. But the eleventh-hour change in the method of its election has changed the complexion of the Upper Chamber. There may well be abler,

more brilliant and sounder men in the Lower Chamber than in the Upper.

The Calling of Joint Legislative Sessions.—The contention of the British Indian delegates that all money Bills should originate in the Lower Chamber was upheld in section 37, which lays down that financial Bills shall not be introduced in the Council of State. The Governor-General shall, in his discretion, make rules for regulating the procedure of, and the conduct of, both Chambers as well as for the joint session of these Chambers. Discussions on questions connected with Indian States, and foreign affairs, excluded areas, action taken by the Governor-General in his discretion in relation to the affairs of a Province, or the personal conduct of a ruler of an Indian State, will be prohibited unless the Governor-General gives his permission. Until rules are made under this section, standing orders in force immediately before the establishment of the Federation will operate subject to such modification as may be made therein by the Governor-General in his discretion. No discussion can be permitted in the Legislature with respect to the conduct of any Judge of a Federal Court or High Court. The Governor-General may direct that discussion shall not take place on a Bill which affects the peace or tranquillity of India or any part thereof. No officer or other member of the Legislature in whom powers are vested under the Act for regulating procedure or the conduct of business, or for maintaining order shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers. This is an excellent provision and tends to maintain the dignity and prestige of the Indian Legislature. Cases have occurred in Indian courts when irate and disgruntled members of Legislatures have actually brought injunctions in the High Court restraining the President from doing what he had a perfect right to do under the standing orders.

In the case of a Bill which has been passed by one Chamber and transmitted to the other Chamber, and more than six months have elapsed from the date of the reception of the Bill by the other Chamber, the Governor-General may order a joint session of the Chambers, but in the case of Bills affecting the financial requirements of the Federation the Governor-General must have power in his discretion to obtain a decision forthwith. This is made clear by a proviso to section 31 (subsection 1), which lays down that, if it

appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his duties in so far as he is by or under the Act required to act in his discretion or to exercise his individual judgment, he may summon a joint sitting even though there has been no rejection of or final disagreement on the Bill, and notwithstanding that the said period of six months has not elapsed. Generally it may be said that the joint sitting of the two Chambers will be held after a period of six months has elapsed. This will enable the Governor-General to gauge the popular feeling on the Bill. He may decide to drop the Bill or proceed with it. In any case, six months is a sufficiently long time for the Government to decide.

Legislative Power of the Governor-General.—Under the Act of 1919 if the Legislature has refused leave to introduce a Bill, or has failed to pass it in the form recommended by the Governor-General, he may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof (section 57 B), and thereupon the Bill shall be deemed to have been passed and shall, on signature by the Governor-General, become an Act. The Act of 1935 gives him all these powers. Under section 44, the Governor-General is empowered to enact forthwith a Bill containing such provisions as he considers necessary if he deems it essential that provision should be made by the Legislature, so as to enable him satisfactorily to discharge his functions in so far as required to act in his discretion or in his individual judgment. The Governor-General, instead of enacting a Bill "forthwith", may attach to his message a draft of the Bill which he considers necessary. The alternative indicated in section 44, paragraph (b), subsection (1) will enable members of the Legislature to acquaint themselves with the object of the Bill, and will give them an opportunity for revising a hasty or precipitate decision previously made or threatened. The Governor-General may then notify his intention, at the expiration of, say, one month, to enact a Governor-General's Act, on the expiration of a stated period. The Legislature could present an address to him praying him to enact the Act with certain amendments or it might even pass the Bill as recommended by the Governor-General.

The Joint Select Committee agreed that such a power was necessary, but they objected to the procedure whereby a Governor

was required to submit a proposed Act to the Legislature before enacting it. The memorandum of the British Indian delegates contended that this would enable him to seek support in the Legislatures against his Ministers. This might compel the Ministry to oppose the measure, and a most unedifying struggle might ensue, unless, like George III, a Governor foolishly embarked on the organisation of his party. The Joint Select Committee agreed with the proposal of the British Indian delegation in thinking this provision undesirable though on different grounds. "Our objection rather is that the proposed procedure will be a useless formality in the only circumstances in which the Governor's Act could reasonably be contemplated. If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the Legislature to pass it, but in the unwillingness of his Ministers who sponsor it, his remedy lies, not in a Governor's Act but in a change of Ministry. If, on the other hand, the obstacle lies in the unwillingness of the Legislature, there can clearly be no point in submitting the proposed legislation to it, and to do so might exacerbate political feeling." This section, as well as the corresponding section 90, is intended to meet "intermediate" cases where an opportunity may usefully be given to the Legislature for revising a hasty and unconsidered decision previously made or threatened. Hence the Governor-General or Governor may send a message of his intention, at the expiration of, say, one month, to enact an Act the terms of which would be set out in the message. The Legislature could present an address to him at any time before the expiration of one month, either suggesting some amendment or approving the Bill in its entirety.

Governor-General's Acts.—In the alternative mentioned in paragraph (b) of subsection 1 of section 44, the Governor-General will, after the expiration of one month, enact the Bill proposed by him to the Chambers either as originally proposed by him or with such amendments as he may deem necessary, after considering any address which may have been presented to him by either Chamber. The Governor-General's Act shall have the same force and effect as an Act of the Federal Legislature. It shall be communicated to the Secretary of State for India and laid by him before each House of Parliament. The functions of the Governor-General under this section will be exercised by him in his discretion. Section 90 deals

with the Governor's Acts and is practically a reproduction of section 44, except in subsection (5) which provides that the Governor shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion. Further, the Governor-General is given the important power to promulgate Ordinances. By section 42 the Governor-General is authorised to promulgate such Ordinances as circumstances appear to him to require, provided that they shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before that date resolutions disapproving it are passed by both Chambers. Such an Ordinance can be withdrawn at any time by the Governor-General. The Act of 1919 had conferred such power upon the Governor-General, and Lord Reading and other British delegates contended that this should be continued. Sir Samuel Hoare argued that in an autonomous province power should be vested in the Governor of the Province. The Joint Select Committee agreed with this view and added, "we cannot doubt that in an autonomous province it should in future be vested in the Governor himself".

Ordinances.—The recommendation relating to the Governor's Ordinances has been embodied in the Act, and section 88 lays down that if at any time when the Legislature of a Province is not in session, and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as circumstances appear to him to require. The Governor shall exercise his individual judgment as respects the promulgation of any Ordinance under the section. He shall not promulgate any such Ordinance if a Bill containing the same provisions would under the Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General. Such an Ordinance shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor. It shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if a resolution disapproving it is passed by the Provincial Legislature; and it may be withdrawn at any time by the Governor. This section is intended to help the Ministers when the Legislature is in recess and an emergency has arisen. The Ministry may request the Governor to

promulgate it, and will assume responsibility therefor. Section 89 deals with a different situation, and empowers the Governor to promulgate an Ordinance if he deems it necessary for the discharge of his special responsibility. The Ordinance will continue in operation for six months, and may be extended by another six months. It is unnecessary to discuss the corresponding sections 42 and 43, which deal with the Ordinances promulgated by the Governor-General.

A Breakdown of the Constitution.—Section 45 deals with the breakdown of the Constitutional machinery and lays down that, if at any time the Governor-General is satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Act, he may by Proclamation—

"(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority;

Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months;

Provided that, if and so often as a resolution approving

the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.

(4) If at any time the Government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General by a Proclamation under this section assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws or Acts or laws of the Federal Legislature, shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion."

This section should be read in conjunction with section 93, which deals with the breakdown of constitutional machinery in a Province. They have regard to contingencies such as have arisen in a few Provinces, viz. in Bengal and the Central Provinces in 1924–1925, when the Transferred departments were taken over by the Governor and administered directly by him. The Government of India Act of 1919 provides for such a contingency. The Government, guided by past experience, made provision whereby the Governor-General can assume to himself all or any of the powers vested in any Federal body or authority. The Act practically makes the Governor-General a dictator, and he can take over the entire

administrative machinery. The only limitation on his powers is contained in the proviso that no part of the powers assumed by him will relate to the Federal Court. The proviso to subsection (3) and the whole of subsection (4) were added in the revision stage of the Bill in the Commons and were moved as an amendment to the original Bill on May 23, 1934.

Sir Samuel Hoare had proposed a period of six months in proviso to subsection (3) of the section, but it was altered to twelve months on the representations of Sir Austen Chamberlain, who contended that the period of six months was too short. The Proclamation will be valid for a period of six months, and if both Houses of Parliament approve of it, will continue in force for a further period of twelve months from the date on which under this section it would otherwise have ceased to operate.

Rulers' Objections: Compromise on the Issue.—Subsection (4) embodies the compromise arrived at between the Government and the representatives of the Princes. It may conveniently be divided into two parts. The first part deals with the machinery to be provided in the event of the breakdown continuing for three years. At the expiry of this period the Proclamation is to cease to have any effect and the Government of the Federation is to be carried on in accordance with "other provisions of the Act". This phraseology was exceedingly vague. It left the whole Constitution hanging like a wet blanket in the air, and failed to provide for an effective alternative to Federation in the event of a partial or complete breakdown in the constitutional machinery. It meant that after three years, beyond which a Proclamation cannot run, there would be reversion to the position under the Act, and Federation would be automatically in operation, unless in the meantime an alternative arrangement was provided by Parliament. The Government spokesmen pointed out that there was bound to be an alternative arrangement before three years had expired, and the section was inserted only to comply with the technicalities of draftsmanship and did not imply any sinister design on the part of the Government. It was obvious that a complete and detailed alternative scheme could not be provided in the Act itself, as it would depend entirely on the exigencies of the situation and the nature of the breakdown, which could not be foreseen. No Parliament could legislate for every contingency in advance and it could easily pass an amending Bill, if such

an emergency required it, in one sitting. The paragraph must be read in conjunction with the following words: "subject to any amendment thereof which Parliament may deem it necessary to make". As Sir Donald Somervell, then Solicitor-General, pointed out in the House of Commons: "these words are very important, and obviously in the case which the honourable and gallant gentleman (Brigadier-General Sir Henry Page-Croft) has envisaged of the same conditions continuing in India which made it necessary to bring the emergency clause into operation, it would be the bounden duty of Parliament to see that, although the clause could not be used beyond three years, amendments were made to the Bill to enable the proper Government to continue. I think my honourable and gallant friend will see that, as a matter of mere drafting, it is necessary that the clause should take this form. If the condition should arise which makes it necessary to fall back on this emergency clause to continue in force during the whole of three years, then all that the proviso affects is that the situation must be met by a Bill which may take any form Parliament may think proper, and cannot be continued by a succession of Proclamations." From a practical point of view it seems highly improbable that the British Parliament will remain supinely indifferent to the issue of a series of Proclamations conferring upon the Governor-General dictatorial powers. Sir Samuel Hoare pointed out that it will be perfectly easy to bring in a one-clause Bill and pass it through all stages, if necessary, in a single day.

The last sentence of subsection (4) meets the objections which were raised to the original Bill by many of the Indian States. The States contended that they are asked to join a Federation in which responsible government has been promised by the British Government. They had expressed their readiness to enter the new organism on the distinct understanding that they would be allowed to share this responsibility and exercise some control over the Government, and, through the Government, over the administration. They recognised the need for an emergency power of this kind, but they pointed out that if Federation disappears into the limbo of oblivion, and the country is governed by the Governor-General without any Constitution year after year, and if these powers are used beyond the three years specified in the Bill, one of two things might happen. Either conditions are such that Parliament decides

that it need not legislate. No necessity for any change arises, and then the position will be exactly as it was before the breakdown occurred. Or it may happen that Parliament is obliged to pass a Bill materially amending the operative part of the Federal structure. In such a contingency the States ought to be given an opportunity to reconsider their position. This was an eminently reasonable demand, and the last proviso to subsection 4 of section 45 embodies the points urged by the Princes. It will safeguard their rights in precisely the same way as they are safeguarded in Schedule II of the Act. Hence if Parliament passes an amending Act which alters those sections of the Act of 1935 which safeguard the rights of States, their Instruments of Accession are voided, and they will then be entitled to reconsider their attitude towards Federation. If the basis of the Federation is shattered, the Princes will be free to leave the Federation. The point urged by the States was eminently reasonable, and this section meets their demand. It is, however, necessary to point out that until such a contingency arises States who enter the Federation will not be allowed to leave it.

CHAPTER II

THE PROVINCES

THE Constitution Act establishes full provincial autonomy, and abolishes the distinction between Reserved and Transferred subjects. All subjects which are reserved will be transferred, and placed in charge of Ministers, who will be responsible to the Legislature for their administration. The Executive Councillors will disappear, and the Provincial Government will be directed by the Cabinet, consisting of a Chief Minister and such other Ministers as may be appointed as his colleagues. The police, jails, finance, judicial, revenue and other departments will now, for the first time in the history of India, be administered by Indian Ministers. The Governor will preside over the meetings of the Cabinet and he will be called upon to assume special responsibility for certain subjects. These subjects are practically the same as those specified in section 12, which has been discussed. Provincial Legislatures will be elected on a liberal franchise, and will have substantial powers. Their power over the Budget will be limited only in certain restricted areas, such as the estimates of expenditure charged upon revenue and the amount needed by the Governor to discharge his special responsibility. These will not be submitted to vote, but all other expenditure must be sanctioned by it. There will be two Chambers in six of the eleven Provinces, viz. the United Provinces, Bihar, Madras, Bombay, Bengal and Assam, but they will be mainly revisory bodies, whose function will be to delay and revise the legislation passed by the Lower Chambers. The Governor has been vested with substantial powers over the police and in dealing with crimes of violence. In certain important spheres he will be the effective head. The Provincial Legislatures will be composed of communities and interests specified in schedules of the Act. Provincial Autonomy will be introduced on April 1, 1937. This is a very brief summary of the changes which the Act has introduced. They are far-reaching and react on almost every phase of provincial life. For the first time in the history of British rule in India,

Provinces which are larger than many a European kingdom will be in charge of Indian Ministers whose powers and opportunities will be considerable. We may now deal with the problem from a different angle and discuss critically the various details. It is unnecessary to discuss provisions analogous to those concerning the Federal Centre, which have been fully dealt with in the preceding chapter. Here only the problems which relate exclusively to provincial administration are discussed.

Two Schools of Thought on Provincial Autonomy.—In the Introduction I have dealt with the demand for provincial autonomy by various parties since the inauguration of the Act of 1919 and traced the progress up to 1928. From 1930 to 1933 there were two distinct groups among Indian delegates in London, with slightly different conceptions of the scope of provincial autonomy. One group aimed at a Central Government, with effective powers over the units of the Federation. It pointed to the Constitutions of the Union of South Africa and the British North America Act of 1867, stressed the need for unity and solidarity in India, and gave examples to show that this unity, which was the product of a highly centralised bureaucracy and natural codes of law, would be seriously affected if Provinces were given substantial freedom from the coordination, supervision and control of the Centre. Moreover the centrifugal forces in a country like India would come into play and quickly destroy a fabric which the patient labour of generations of devoted men had built up in a hundred years. The group pointed to the great codes of law which had welded the Indian peoples, and knit up warring creeds and races who had before been torn by differences of language, custom, religion and culture, into a powerful and self-reliant nation inspired by complete faith and trust in the future of their country. The rival group, which was not confined to the Muslim delegates and included some prominent leaders of other Indian parties, did not deny the efficacy of the great codes of law in the building up of national unity and levelling of barriers, nor was it averse to the maintenance of agencies which had laid the foundations. It was as keen on removing the centrifugal forces to which India was exposed, owing to the bewildering diversity of her races, languages and religions. They, however, pointed to the great harm done to the growth of genuine nationalism in India by a highly centralised administration which had consistently ignored the

special needs of the Provinces. The steam-roller had been at work for over a century and a half and had completely killed both individuality and initiative. Instead of giving vitality and energy to the parts, the Central Government had acted like a gigantic sponge, and sucked what freedom and initiative they had possessed in the past. They had been the recipients of doles so long that they had forgotten the days of their comparative freedom and independence in the last century. They had degenerated into weak and humble suppliants before the Centre, and were constantly asking for grants and chasing each other for favours and baksheesh. The group had no desire to stand aloof from the main current of national life nor were they behind anyone in their admiration for All-India codes which had unified an India divided by racial and religious rivalries and torn by internecine strife. Indian unity was the greatest contribution of Pax Britannica, and they were as eager and determined to maintain it as the Centralists. But they did not wish for a leviathan which would "swallow" provincial privileges, emasculate provincial freedom and reduce all the units of the Federation to the deadly and wearisome level of a county council. While they refused to wander in the wilderness or indulge in administrative nihilism, they turned their face resolutely against the autocratic centralism of Bonapartist, Fascist or totalitarian states. They wished to develop sovereign states of British India enjoying the same amount of freedom from interference in their internal affairs as is guaranteed to Indian States by the Constitution Act. Their ideal was the transfer of all concurrent subjects to the provincial field and substantial reduction in the list of exclusively Federal subjects. The powers of the Governor should be clearly curtailed until he became merely the constitutional head of the Government. In the sphere of legislation the competence of the provincial Legislature should extend to every subject in which the Province was directly concerned and residuary powers should be vested in the Provinces In the sphere of finance there should be real financial autonomy, while in administration Provincial Governments should have control over all services, Provincial and Imperial, subject to such provisions as might be deemed necessary for keeping up the standards of services through Provincial or Federal public-service commissions.

Contributions of the Autonomists.—These were the demands of the autonomists, who carried on their work in accordance with a

definite programme of provincial autonomy, and succeeded in achieving some of its aims in the Constitution. While it cannot be denied that the hopes of the section which desires to establish sovereign States of British India are bound to remain unrealised for a long time, it must be admitted that they infused a new element of vitality and energy into discussions which threatened to become dreary and barren in the critical phases of our deliberations. The discussions on the distribution of legislative powers acquired an interest and assumed an importance which had been conspicuously lacking hitherto. The allocation of many subjects to the Federation or the units was debated ostensibly on the principle of administrative efficiency, but in this, as on a few other subjects, sentiments and feelings were clothed in the garb of a cold and dispassionate analysis of provincial autonomy. It was not till nearly three years after the discussions had started that the question of distribution of powers was finally settled. Those who casually glance at the dull and drab list of subjects given in the Seventh Schedule to the Constitution Act do not know the enormous industry and great discussions that lie behind most of those lists, the number of witnesses that have been examined by various committees, or the arguments that have been marshalled threadbare by the protagonists of the two schools. Nor do they know the scenes that were enacted in various committees. When the future historian unearths the archives and gives a complete picture of those negotiations, posterity will be able to get a clear idea of the reality and intensity of the discussions. It is sufficient to point out here that the champions of provincial rights were fighting against overwhelming odds, for against them were arrayed all the ordered ranks of leaders famous in the realms of law, politics and administration, eminent for their character and attainments, and distinguished for the influence they exercised in high circles. English statesmen naturally prefer a centralised form of government as it implies both a stable and a strong administration. The only occasion on which the British Parliament has granted a genuine type of Federal Government was in 1900, when the Commonwealth of Australia Act was passed. Neither the Canadian nor the South African Acts are a suitable model for a Federation, as the Provinces, particularly in the latter Act, are glorified local bodies with a powerful centre, working with irresistible will against the constituent units. It was but natural that the units of such a

Federation should be regarded as a counterpart of the London County Council.

This was undoubtedly the idea in certain circles in England even after the Federal scheme had been completed in all its details, and it was constantly in evidence in the debates in the House of Commons on the Bill. There were, however, a few persons who had clearly grasped the implications of the new proposal from the very beginning and they continued to advocate them with great clarity, lucidity and brilliance in the Committees, on the platform and in the House of Commons. On the whole it must be confessed that successive committees and conferences whittled down the provincial rights which had been conceded in principle, and the Joint Select Committee put the finishing touches to this process and prepared a scheme in which provincial autonomy was substantially reduced and the Federal Centre was vested with powers which would have been deemed incredible to framers of the Federal scheme of 1930. This will be made clear in the following pages. Instead of making provision for conventions whereby the Governor of a Province will gradually and almost imperceptibly acquire the constitutional position of the Governor of Victoria or South-West Australia, the theory of the English Constitution, which has never been put into practice in England during the last 250 years, has been applied in several proposals which make him virtually the effective head of the Provincial Government. He will preside at the meetings of the Council of Ministers as suggested by the Joint Select Committee, and indicated by subsection 2 of section 50 of the Act. The Provincial Constitution Sub-committee had unanimously resolved that "the Chief Minister should preside over meetings of the Cabinet; but on any special occasions, the Governor may preside".

Governor's Control over the Police.—Sections 56 to 59 give him complete power (1) to frame amendments of rules, regulations or orders relating to any police force, whether civil or military; (2) crimes of violence or terrorist crimes intended to overthrow Government; (3) disclosing of information relating to sources from which information has been or may be obtained; (4) and finally, rules for the transaction of business of the Government.

Regarding (1) to (3) it must be admitted that the need for reservation of these powers was pressed by several police deputations

that waited on the Joint Select Committee, and the feeling was general that extraordinary powers should be given to the Governor to enable him to deal effectively with crimes of violence. But the provision in the list of his special responsibilities, embodied in section 52 (1) (a), is so wide and comprehensive that it could effectively cover the special provisions explained above. If his responsibilities for the maintenance of peace and tranquillity had been limited to crimes of violence, he would have had sufficient power to deal with emergencies. The Minister in charge of police will occupy a most unenviable position in the Cabinet. He will be attacked in the Legislature for being too yielding, and by the Governor for being too strong. Provincial autonomy without complete control over the police is meaningless, and the British Indian delegates laid their finger on the weak spot when they pointed out the serious drawbacks of the vague and undefined powers which the Act confers in this sphere.

From this brief review of the scope of provincial autonomy as sketched in the Act it will be clear that the autonomy as it ultimately emerged from Parliament is vastly different from the picture which had been painted by the vivid imagination of its autonomist champions. It is a truncated form of autonomy, bereft of some of those features which had mobilized enthusiasm in its favour. This does not, however, mean that the Provinces have not secured substantial advances over the existing system. They have certainly greater freedom in the sphere of legislation, finance and administration than they possessed before, and there is no reason why, given patience, goodwill and trust between the Federation and units, they should not become, in the fullness of time, masters in their own household.

The Competence of Provincial Legislatures.—The question of distribution of legislative powers has been discussed in previous chapters and we can only give a brief summary of the views of the Joint Select Committee on a few points. The Committee, in discussing the list of concurrent subjects, stated that they had at first thought that the case could be met by so defining the powers of the Central Legislature as to restrict its competence in this sphere to the enacting of broad principles of law, the Provincial Legislatures being left to legislate for the Provinces within the general framework thus laid down. This was one of the methods laid down by the

German Constitution of 1919. Further study of the problem convinced the Committee that the method adopted in the White Paper was the most suitable. In the case of conflict between Central and Provincial Legislatures on subjects comprised in the concurrent list, the Central legislation shall prevail unless the Provincial legislation is preferred and receives the assent of the Governor-General. This is a practicable method for reconciling the two points of view and it avoids the legal difficulties which any attempt further to refine the definitions in List III for the purposes of distributing legislative power between Central and Provincial would of necessity create.

Powers of the Governor.—The Governor's powers in his sphere of special responsibility are practically the same as those of the Governor-General. His special powers relating to police rules, crimes of violence intended to overthrow the Government, disclosure of sources of certain information, are comprised in sections 56, 57 and 58, and are based upon the representations made by local Governments and by various bodies which appeared before the Joint Select Committee. They urged these precautionary measures when the Police Department is placed in charge of Ministers responsible to Provincial Legislatures. It is one of his special responsibilities to protect the rights of any Indian State, and the rights and dignity of the ruler thereof. So far as the rights of the States are concerned, the position is clear. The original Bill referred merely to the rights of the Indian States. An amendment was moved in the House of Commons to add "and the rights and dignity of the Ruler thereof". The amendment will presumably, as explained by the Secretary of State for India, exempt a ruler from arrest on a civil suit under the Civil Procedure Code. This privilege has always been enjoyed by the rulers. There are also certain exemptions from Customs duty, and the privileges of having guards and escorts in British India. The Governor of Sind will have the additional responsibility of securing proper administration of the Lloyd Barrage and Canals system. It is pertinent to point out here that the Second Peel Committee on Federal Finance confined this responsibility of the Governor to the Lloyd Barrage. No mention was made of the "Canal" scheme. The White Paper proposals of the Government reproduced it without alteration. In Parliament, however the Canal scheme was added to the original item. The

power thus conferred upon the Governor is extremely wide, but the members of the Finance Committee who made this proposal never intended that the Governor should interfere in the day-to-day administration of the Barrage. There is effective supervision of the Governor-General over the Governor in all matters where the latter is required to act in the exercise of his special responsibilities. In the same way the superintendence of the Secretary of State over the Governor-General is clearly laid down, and the chain of responsibility to Parliament is complete. The Governor of each Province is to appoint a person, being a person qualified to be appointed a Judge of the High Court, to be Advocate-General. The words, "being a person qualified to be appointed a Judge in the High Court", were inserted as an amendment in the House of Commons on the motion of the Solicitor-General. It will be his duty to advise the Government upon such legal matters, and to perform such other duties of a legal character as may, from time to time, be referred or assigned to him by the Governor. The appointment will be made by the Governor and not by the local Government. This is made clear in subsection (4), which has laid down that the Governor shall exercise his individual judgment in appointing and dismissing the Advocate-General. He will naturally consult his Ministers and the High Court before making this appointment.

Control over the Police.—The Act makes a compromise between the views of diehards who were strongly opposed to the transfer of police to Indian Ministers, and those who advocated unconditional and complete transfer of police. In the Services Sub-committee of the First Round Table Conference some of the British delegates had suggested that control over the police forces at present exercised by the Inspector-General should be preserved, and they recommended that the Police Act of 1861 should not be subject to repeal or alteration by any Legislature without the previous consent of the Governor-General. They added that the Police Acts of the Governments of Bombay, Bengal and Madras should be included in this category. The Joint Select Committee agreed with this view and stated that the Acts as well as some of the rules framed thereunder should not be amended without the Governor's consent. The main object of this section is to ensure that the internal organisation and discipline of the police continue to be regulated by the Inspector-General. Sir Malcolm Hailey pointed out

in his evidence before the Joint Select Committee that it will be necessary to separate rules which would be called Governor's Rules from the rest of the Police Manual. There will be two kinds of rules: (1) rules made only with the sanction of the Governor, and (2) rules made by the Inspector-General of Police with the general approval of the Government. Presumably this will be done by all Provincial Governments. Adequate power is given to the Governor by section 57 to combat terrorism, and the Governor may authorise an official, when this section is in operation, to speak and otherwise take part in the Provincial Legislature.

The Central Intelligence Bureau of the Government of India will be assigned to the counsellor in charge of one of the Governor-General's Reserved departments, and the relationship which now subsists between the Provincial Criminal Investigation Departments and the Intelligence Bureau will be maintained. A powerful section advocated the transfer of the Criminal Intelligence Department to the Federal Government. This would have brought the work of the provincial police to a standstill, and the proposal was wisely rejected. The Governor-General, by virtue of his powers of superintendence over the Governors in the sphere of his special responsibilities, will issue rules and instructions to the Governor directing him to take particular steps regarding any grave menace to the peace of his Province. The Rules of Business to be framed under section 59 cover a wide field, and the Governor is authorised to appoint suitable staff to meet the heavy demands that will be made by the new duties imposed upon him by the Act. The Governor may appoint as a secretary, with a status hardly inferior to that of a Minister, a senior civilian whose position, experience and influence will enable him to play an extremely important part in the Administration. A senior civilian may be necessary in the case of presidency Provinces. In other Provinces members of the Indian Civil Service are appointed Governors and may not require such help. The Governor's powers in legislative and financial procedure are, *mutatis mutandis*, the same as those of the Governor-General, and it is unnecessary to discuss the legislative procedure in Provincial Assemblies.

The Provincial Upper Chambers.—Nor, similarly, is it necessary to deal with the Provincial legislative procedure except in the case of Upper Chambers. Section 74 regulates the relations between the two

Chambers of Provincial Legislatures. While the Upper Chamber of the Federation has almost equal powers with that of the Lower Chamber, the powers of Provincial Upper Chambers have been deliberately restricted, and their main function is to revise and, if so advised, delay the legislation sent up by the Lower Chamber under the Act. The Joint Select Committee made this perfectly clear, and this principle has been embodied in the Act. They cannot originate money Bills, and demands for grants will be submitted to the Lower House alone. The possibility of a conflict between the two Chambers is avoided by subsection (2), which gives the Governor the power, before the expiration of twelve months from its reception by the Upper Chamber, to summon a joint session on any legislation which has been passed by one Chamber but rejected by the other. It will be taken to have been duly passed by both Chambers if approved by a majority of members voting at the joint session. If a Bill passed by the Lower House relates to finance or the Governor's special responsibility, the joint sessions may be convened forthwith. Presumably, a Bill passed by the Upper Chamber but rejected by the Legislative Assembly will lapse, and joint sessions will be convened only when the Lower House so desires.

The provisions of the Act relating to the sessions of a Provincial Legislature, its prorogation and dissolution, and the right of the Governor to address and send messages to the Chambers are practically the same as those of the Federal Legislature. The Ministers and the Advocate-General are to have the right to take part both in the Upper and the Lower Houses as well as in the joint sittings of both Chambers. Section 63 of the Act incorporated the recommendations of the Sub-committee of the Third Round Table Conference presided over by Lord Irwin (now Lord Halifax). All proceedings in the Provincial as in the Federal Legislatures are to be conducted in the English language, but those who are unacquainted, or not sufficiently acquainted, with the English language will be allowed to use another language.

Anglo-Indian Community.—In 1930 the domiciled European and Anglo-Indian community urged that European education should be placed under the Central Government and, in 1923 and 1925, deputations from the community were received by the Secretary of State. The Act lays down that there shall be no reduction in

the existing grants-in-aid of the community in any Province other than a *pro rata* reduction with a reduction in the general educational grants-in-aid. The average of the grant is arrived at by taking the average of the figures of grants-in-aid for such institutions from 1923 to 1933. In computing for the purpose of the subsection, grants for capital purposes are to be included. The provisions of the section will cease to have effect if at any time the Provincial Legislative Assembly so resolves by a majority which includes at least three-fourths of the members of the Assembly.

High Courts and Provincial Legislatures.—Section 86 marks a complete departure from existing practice and prohibits the discussion on the conduct of any Judge of the Federal Court or of the High Court belonging to British India or a Federated State in discharge of his duties. The Bill, as originally introduced, had restricted the prohibition to the conduct of a Judge "*in performance of his judicial functions*". By an amendment moved in the House of Commons, the words "in discharge of his duties" were substituted. As the duties of a Judge will include administrative as well as judicial functions, the Legislatures will not be allowed to discuss the actions of the Judge in discharge even of his administrative functions. These were explained by the Government spokesmen in the House of Commons. The Provincial Legislatures have hitherto exercised the right of discussing the administrative action of the High Court, and important debates have taken place in the past on the strength of the subordinate judiciary in a Province as well as the composition and the strength of the High Court; the post of the High Court Registrar; the conduct of a High Court Judge who had spoken strongly at a meeting held to protest against the impositions by the United Provinces Government of a duty on motor cars, and other matters. In the Bengal Council the problem of adequate representation of certain communities in the Calcutta High Court was discussed on many occasions by various members. Though some heat was imported into the debates at times, they served an exceedingly useful purpose and gave expression to the legitimate needs of some very powerful classes in the Provinces. The conduct of the High Court Judges in the performance of their judicial functions was never debated but the administrative functions of a High Court were discussed by the Legislature. The meaning of section 86 is by no

means obvious. Clearly, the conduct of a High Court Judge in the performance of administrative functions cannot be discussed; but it is not quite clear whether the administrative functions of the High Court in its corporate capacity cannot be criticised. There is no clear prohibition of such discussion in the Act. The object of the amendment, in the words of the Solicitor-General, was "to prevent discussions of the administrative functions of the Judge or to criticise the Judge in other than indirectly judicial functions". An amendment to add "the District Judge" to the clause was wisely rejected by a substantial majority.

The executive authority of the Government extends to "excluded" and "partially excluded areas" unless the Governor, by public notification, directs that the Act shall be subject to such exceptions as he thinks fit, as he is empowered to make regulations for the peace and good government of an "excluded" or "partially excluded area".

No Provision for Protection of Religious Rites and Usages in India.—It is worth noting that paragraph (b), subsection (2) of section 67 of the Government of India Act of 1919, which dates from the Indian Council Act of 1861 and was incorporated in all subsequent measures, has been omitted in the new Act. It provided that it "shall not be lawful without the previous sanction of the Governor-General to introduce at any meeting of either Chamber of the Indian Legislature any measure" affecting, *inter alia*, "the religion or religious rites and usages of any class of British subjects in India". This was based on the Proclamation of Queen Victoria published in 1858. The advanced section of the British Indian delegates advocated the deletion of this provision from the Bill in the Third Round Table Conference, while the conservative section, afraid of the inroads upon religion and religious rights and usages that might be made by over-zealous reformers, strongly opposed it. The White Paper retained the interdict, but the Joint Select Committee advocated deletion. This has been done, and reformers are thereby given a free hand to bring forward such measures, but the Governor can refuse leave to introduce any such measure if he thinks that it affects the discharge of his responsibility to maintain the peace and tranquillity of the Province.

Chief Commissioner's Provinces.—The following are the Chief Commissioner's Provinces:

(1) British Baluchistan.
(2) Delhi.
(3) Ajmer-Merwara.
(4) Coorg.
(5) The Andaman and Nicobar Islands.
(6) The area known as Panth Piploda.

Section 95 (1) lays down that in directing and controlling the administration of British Baluchistan, the Governor-General shall act in his discretion. The authority of the Federation extends to British Baluchistan, as it extends to other Chief Commissioner's Provinces, but no Federal Act will apply to British Baluchistan unless the Governor-General in his discretion by public notification so directs, and the Governor-General may apply any Act, to be applied with such modifications as he may deem necessary. He will, of course, consult the Chief Commissioner, but the primary responsibility will be that of the Governor-General.

Part IV of the Act dealing with the Chief Commissioner's Provinces sets at rest many controversies regarding the administration of these Provinces. Proposals had been made in the past for the constitution of a new Delhi Province, the amalgamation of Ajmer-Merwara with the United Provinces, the incorporation of Coorg in the Madras Presidency, and the constitution of British Baluchistan into a unit of the Federation. Such proposals were thoroughly discussed in the Third Round Table Conference, and the conclusion arrived at was that new Provinces would create many more problems than they would solve. Details of some of them will be found in the Memoranda of the Government of India submitted to the Simon Commission. Again, various proposals were mooted for "Legislatures" for some of these Provinces such as Delhi, but a closer examination revealed the fact that direct administration of such areas, with the exception of Coorg, which has a Legislature of its own, would be conducive to economy and efficiency.

Reconstruction of the Indian Provinces.—The question of redistribution of Provinces has been a hardy annual at meetings of various organisations in India, and the enterprising Andhras had brought this issue within the sphere of practical politics. But the difficulties of the problem were realised only when it was subjected to the scrutiny of hard facts. Once a new Province has been created, it is difficult to know where we could stop. The whole map of India

would then have to be changed. There are, no doubt, certain linguistic areas which are compact and homogeneous, such as the Andhra Desha. It is a very sad commentary on the brilliant part which the Andhra leaders have played in modern political movements that during the period of intense activity and sustained negotiations and deliberations in India and England, namely 1930 to 1933, no Andhra leader took the trouble of placing the case for the Andhra Province before any responsible body in England. Only jejune references were made to the problem in the plenary session of the First Round Table Conference, but they lacked the energy and resilience of persons who had fought for this issue in the stormy and crowded meetings of the Congress. They lost their case by default. Had it been properly put, they could have easily secured the active support of many able men in India and London. Sind, Orissa and Andhra stand on a different footing altogether from other proposed Provinces. They are all homogeneous Provinces knit together by a common language and a common culture. Many other proposals had been made to carve out new Provinces from the Bombay Presidency, the Central Provinces, the United Provinces and the Punjab. They bristled with so many difficulties that everyone who examined them closely came to the conclusion that it was unsafe to touch them. They would have created a hornet's nest and thrown the finances both of the units and the Federation into the melting-pot. The root of the difficulty is finance. There is not sufficient money to go round, and all newly created Provinces would have been bankrupt in a very short time. Satisfaction would have soon become discontent. The problem of the formation of new Provinces needs very careful consideration as it is linked up with other problems—racial, communal and economic—of India, and until that is solved it is difficult to find a satisfactory *via media*. The claims of Orissa and Sind stand on an entirely different footing from those of other areas, and the creation of these Provinces did not present the same problems. They were inaugurated as separate Provinces on April 1, 1936, amidst universal rejoicings. The fear expressed by many persons that the Hindus of Sind will not cooperate with the new administration were promptly dissipated by the address presented by Sind Hindus in which they assured the Governor of their loyalty to the new régime.

CHAPTER III

THE FEDERATION AND ITS UNITS—LEGISLATIVE AND ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION, PROVINCES AND STATES

DISTRIBUTION OF LEGISLATIVE POWER

IN tracing the genesis of the Federation in the previous chapters and analysing the policy of the autonomists and centralists, an indication was given of the cleavage between the champions of the units and those of the Centre. The efforts of the two groups were concentrated on the distribution of Legislative power between the Federation and its units and prolonged discussion revolved round this vital problem. If the units are given substantial legislative powers the problem of provincial rights would be automatically solved. If, on the other hand, the Centre maintains its grip on the units, the Federation would be a camouflage, and the Provinces might be merely delegations from an all-powerful and omnipotent Centre.

By the Act of 1919 the Central Legislature had power to legislate on any subjects even though they were classified as provincial subjects, and a Provincial Legislature could similarly legislate for its own Province on any subject, even though it were classified as a central subject. Section 84, subsection (3) of the Act of 1919 lays down that the validity of any Act of the Provincial Legislature and of any local Legislature cannot be open to question in any legal proceedings solely on the ground that the Act affects a provincial subject, or a central subject, as the case may be. The Governor-General in Council acted as a unifying element, and it was through him that conflict between the Provincial and Central Legislatures was avoided. The arrangement was highly praised by the Simon Commission as it skilfully avoided pitfalls of concurrent legislation which has involved Canada in ruinous litigation. When, however, proposals for a Federal Government were made in the First Round

Table Conference and were supported by representatives of Provinces, it was agreed by every important section that the basic conception of Federation involved strict delimitation of legislative powers. Only when the unitary system gave way to the new formative principles and a substantial amount of oxygen was poured into the lungs of the new organism could genuine Federation be constructed. There was, of course, no question of sovereign Provinces measuring themselves against the Federation. The question of conflict between the two does not arise for the simple reason that the spheres of the two are strictly defined.

Concurrent Legislation.—The scheme for concurrent legislation which won high praise from the Simon Commission would have broken down within one month of the working of the new Federal structure in a sound Federal Constitution. For the illimitable extension of concurrent jurisdiction as visualised in the Government of India Act of 1919 and embodied in section 84, paragraph (a), subsection (1) would have been frequently called in as a *deus ex machina* and it would have reduced the whole scheme to chaos. Concurrent jurisdiction is the greatest hindrance to the working of the Federal machinery, and the merit of the new Act consists in reducing it to a minimum. Even the present Federal list is too large, and the progress of Federalism in India will depend upon the Provinces absorbing all the concurrent subjects. There ought to remain only two sets of subjects—Federal and Provincial. This will undoubtedly take time, but the success already achieved in endowing the new Provinces with a substantial number of subjects of vital importance to them augurs well for the future.

The following quotation from the speech of Lord Selborne in the House of Lords, on the Government of India Bill of 1919, will make this point perfectly clear. "The legal system of India as between the Government of India and the Provinces is one which is called concurrent jurisdiction. When I had the honour of taking part in framing the Constitution of the Union of South Africa we received a special message from Sir Wilfrid Laurier, the Prime Minister of Canada, to this effect, 'Shun concurrent legislation as far as you possibly can—it is the very devil. It has been the curse of Canadian politics; the snare of statesmanship. Avoid it.' This advice was taken, and the Constitution of the Union of South Africa avoided it with considerable ingenuity and skill."

Some very important and influential elements in the three Round Table Conferences had undoubtedly considerable apprehensions and fears regarding the implications of Federation, but they were reconciled to the new scheme because it meant greater freedom for the units and less interference from the irritating and vexatious treatment which had so far been meted by the Centre. A glance at the evidence of Provincial Ministers in the Report of the Reforms Enquiry Committee of 1924, will show how widespread the discontent was. The list of subjects prepared by the Committee on the Distribution of Functions appointed by the Third Round Table Conference was subjected to a careful scrutiny by the Government of India and the Provincial Governments, and was examined later on by some of the members of that Committee. The White Paper proposals embodied the decisions of the Government on this vexed problem. The Joint Select Committee discussed them with great care and made some important changes on a few points, but the framework of the White Paper proposals remained intact. The concurrent list presented greater difficulty, and Sir Samuel Hoare was subjected to a cross-fire of questions in his evidence before the Committee both by British and Indian delegates on October 10 and 12, 1935. The concurrent list is essentially a catalogue of provincial subjects; they are basically provincial and their administration will be by Provinces.

Proposals were made by certain important members of the British Indian delegation that the concurrent list should be further reduced by transferring certain subjects to the provincial list, but such a proposal could not have been carried into effect by the Government as it had committed itself to a definite decision after laborious investigation. It was contended by this section that the Constitution Act should lay down explicitly that the powers of the Federal Legislature in the concurrent field should be used only when its character as a subject of all-India importance has been clearly established, and no invidious distinctions should be made between different Provinces. There must be uniformity in legislation, and it was exclusively for the sake of uniformity that a provincial subject was made a concurrent subject.

The other suggestion was that the prior assent of the Provinces or of a majority of them should be regarded as a condition precedent for the exercise of these powers by the Centre.

White Paper Proposals.—The White Paper had suggested another limitation by debarring the Centre from so using its powers in respect of a concurrent subject as to impose financial obligation on the Provinces. These suggestions were rejected by the Joint Select Committee; and the necessary check which the White Paper proposal wished to impose on the Centre was removed. The Centre is now enabled to pass a series of laws dealing with concurrent subjects which might put an enormous financial strain on the slender resources of the units. The Joint Select Committee seemed to have a pathetic faith in the efficiency of Central legislation, and the concentrated fire of questions to which Sir Samuel Hoare was subjected in his evidence on October 10 and 12, 1933, showed this. They did not deny the possibility of the Centre passing certain laws which might impose financial obligations on the units. But they suggested that no action should be taken by the Centre without satisfying itself in advance that the Provincial Governments approved of the measures and were prepared also to provide the necessary funds for them. They made a specific proposal that the Federal Government should consult representatives of Provinces before initiating such proposals. Their suggestion has been embodied in paragraph XXV of the Instrument of Instructions to the Governor-General which directs the Governor-General that, in carrying into effect any Act of the Federal Legislature relating to the concurrent legislative list, he should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposals, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Province.

We may now deal with the general principles which regulate the relation of the Centre to the units. The principles underlying the Federal system will be clear from section 100, which lays down that the Federal Legislature has power to make laws with respect to matters enumerated in List I (Federal), and the Provincial Legislatures have, and the Federal Legislatures have not, the power to make laws with reference to List II (Provincial).

How Conflict between Provincial and Federal Laws is avoided.—Regarding concurrent subjects, both the Provincial and Federal Legislatures have power to make laws with respect to any of the

matters in List III (Concurrent), and the inconsistency between Federal laws and Provincial or State laws is avoided in the manner indicated in section 107, whereby, if a Provincial law is inconsistent with the Federal law, the latter will prevail, if it has received the assent of the Governor-General or of His Majesty, but the Federal Legislature may, at any time, enact further legislation with respect to that matter. No Bill or amendment which is repugnant to any Provincial law will be moved in either chamber of the Federal Legislature unless it has received the previous assent of the Governor-General. If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void. The arrangement may appear to be complicated, but it was carefully considered by the Sub-committee of the Third Round Table Conference and thoroughly explored by the Joint Select Committee. They came to the conclusion that the device suggested by the Third Round Table Conference can be worked.

Section 99 provides that no Federal law shall, on the ground that it would have extra-territorial operation, be deemed to be invalid, in so far as it applies—

"(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or in any Federated State wherever they may be; or,

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to the subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval, military or air force raised in British India, to members of, and persons attached to, employed with or following that force, wherever they may be."

The Federal Legislature alone is competent to make laws with respect to these classes. Regarding the States, the Federal Legislature

is competent to make laws only on those subjects for which the State has acceded to the Federation, and the Instrument of Accession is the primary document in determining the obligations of a Federated State to the Federation. The Federal Legislature will have power to make laws for two or more Provinces, if resolutions to that effect are passed by the Legislatures of the Provinces concerned. The Federal Legislature may make provision for applying the Naval Discipline Act to the India Forces, with modifications to suit the circumstances of India, but it will have no power to implement trade agreements with other countries for any Province, except with the previous consent of the Governor-General, and in the case of a Federated State except with the previous consent of the ruler.

Restrictions on Powers of Legislatures.—Without the previous consent of the Governor-General no Bill or amendment can be moved in the Federal Legislature which—

"(a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India;

(b) repeals, amends, or is repugnant to any Governor-General's or Governor's Act, or an ordinance promulgated in his discretion by the Governor-General or a Governor,

(c) affects matters as respects which the Governor-General is . . . required to act in his discretion,

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or,

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax or income in respect of income taxed or taxable in the United Kingdom."

Neither the Federal nor the Provincial Legislature has power to make any law affecting the Sovereign or the royal family, dominion or suzerainty of the Crown in any part of India, or the law of British nationality or the Army Act, Air Force Act, Naval Discipline Act or the law of Prize or Prize Courts, or except as expressly permitted by any section of the Indian Constitution Act of 1935.

Though the Act imposes no statutory obligation on the Governor-General to consult representatives of provinces in passing laws in the concurrent sphere, the Instrument of Instructions will, no doubt, give directions to the Governor-General on the subject, but there is no reason to believe that the Governor-General will be prepared to withhold his previous assent to such a measure on the sole ground that the Provinces have not been consulted beforehand. The main object of the concurrent list is to secure uniformity, and section 107 will normally be employed to achieve the greatest measure of uniformity which might be found practicable. It does not prevent an indefinite extension of such laws, and constant encroachment on the Provincial Legislatures, which will mean a series of financial responsibilities which neither their exchequer nor their potential resources can bear. It was unfortunate that the Committee did not retain the safeguard provided in the White Paper which imposed on the Federation the duty of paying the expenditure involved in the administration of such laws. As the minutes of the Joint Select Committee show, Sir Samuel Hoare struggled manfully against overwhelming odds and made brilliant replies to the searching questions or arguments of Sir Austen Chamberlain, Lord Reading, Lord Eustace Percy, Lord Salisbury and others. We do not know what passed in the discussions of the Joint Select Committee, but their decisions embodied in paragraphs 233-34 seriously impair provincial autonomy. A glance at the Legislative Lists will show the range of the Provincial Legislature, and the extent of its power over taxation. Viewed solely from the point of view of the quantum of subjects included in Lists II and III, the progress achieved by the Provinces is immense. The discussions on some of the items were prolonged and threatened at times to create a split among the delegates. The Joint Select Committee made only minor changes in the lists published in the White Paper.

Power of Federal Legislature to Legislate in Emergencies.—If a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature will have power to make laws for a Province or any part thereof on any subject in the Provincial List. In such a case no Bill or amendment can be introduced or moved without the previous sanction of the Governor-General in his discretion. All Provincial laws which are repugnant to the Federal laws, whether passed before

or after the Provincial law, will be void to the extent of such repugnancy.

Section 104 settles the vexed question of residuary powers of legislation and taxation by vesting decisions on the Governor-General, and embodies a compromise which was reached by the Third Round Table Conference after considerable discussion and negotiation. In the discharge of his duties the Governor-General will act in his discretion. The subject had become a focus of controversy and a number of catchwords and shibboleths had clustered round it for years. This is not an ideal arrangement, as, in all genuine Federations, residuary power vests in the units. The position of the Governor-General will not by any means be a happy one, but as he will be prepared to bear the enormous responsibility on his shoulders, this will be only a slight addition to his fearful load. Though the view of certain delegates that the residuary powers of legislation and taxation should be vested in the units has not been fully adopted, the compromise does partly meet their demand.

With regard to the Indian States, section 101 lays down that nothing in the Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any conditions contained therein. The Act, therefore, does not govern the legislative relations between the Federal Legislature and the States. They will be determined by the Instruments of Accession, which may contain a series of reservations regarding the extent of jurisdiction to be exercised over each State in all Federal subjects. It is clear that every Act of the Federal Legislature concerning those subjects which have been accepted as Federal subjects by a State will apply *proprio vigore* in those States, as they will in the Provinces, and the ruler of a State will be charged with a duty identical with that imposed upon a Provincial Government.

Federal and State Administrations.—The jurisdiction of the Federal Legislature in the States will not be exclusive. The State authority will continue to function *pari passu* with the Federal authority, and States will continue to legislate on subjects for which they have acceded, but there will be a marked difference between State and Provincial legislation. No Province can legislate on an exclusively Federal subject, but Federated States will continue

to do so on a number of subjects for which they have not acceded.

Another difference between Provincial and State legislation may be noted here. All the Provinces will enter the Federation on its inauguration and have no option in the matter. Their representatives at the Round Table Conferences have agreed to the scheme and every Province of British India must accept the entire scheme of distribution of legislative powers comprised in Lists I, II and III of the Seventh Schedule to the Act. The States, on the other hand, are free to do as they like. They may enter the Federation, and even when they enter they can pick and choose subjects within certain restricted limits.

Rigidity of Legislative Lists.—There are two points in connection with the Legislative Lists to which reference may be made here. The classification of subjects into Federal, Provincial and Concurrent is excessively rigid and inelastic, and no machinery is provided in the Constitution whereby certain subjects, say, in the Concurrent list could be transferred to Provinces. There are a number of subjects in this list which could be provincialised with ease and convenience and no administrative difficulty need be experienced by such transfer. An effective method ought to have been devised whereby transfer of certain subjects in the Concurrent field and even in the Federal list could be effected after the passage of a resolution by the Federal Legislature and representatives of Provinces.

The second point which awaits a clear decision is the question of States' sovereignty over matters with respect to which they have transferred jurisdiction to the paramount Power. The distinction between jurisdiction and sovereignty may appear subtle to some, but it is vital. This refers particularly to the land granted by the States to the Government of India for railway development. Do States retain their sovereignty over areas over which their jurisdiction has been surrendered? Where does jurisdiction end and sovereignty begin? Will the States be entitled to raise this point at the time these Instruments of Instruction are discussed? Subsection (4) of section 45 seems to visualise the possibility of States resuming their sovereignty over subjects which they have accepted as Federal in the event of a breakdown in the constitutional machinery.

Paramountcy not mentioned in the Act.—Another point may be noted here. The Act does not refer, even by implication, to paramountcy, and it has been deliberately kept out of the competence of the Federal Legislature. Section 285 lays down that "subject in the case of a Federated State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State". It is true that section 99, paragraph (b), subsection (2) of the Act goes further and lays down that the Federal laws shall also apply to British subjects who are domiciled in any part of India wherever they may be. An examination of this question, however, shows conclusively that the Federal Government does not command the exclusive allegiance of the States' subjects. Indeed, in the form of oath or affirmation to be taken or made by a member of a Legislature who is a subject of the ruler of a Federated State, the reservation of faith and allegiance to the ruler, his heir and successors, is expressly made. The paramountcy power of the Crown remains intact, and the Viceroy, as representative of the Crown, will deal directly with the Indian States regarding subjects for which the States have not acceded to the Federation, and the Federal Court will have no jurisdiction over non-Federal subjects of such a State. The reasons advanced by Sir Samuel Hoare in his evidence before the Joint Select Committee were cogent enough. He said that the definition of paramountcy in the Act would raise numerous controversies, and the scope as well as the growth of the powers of paramountcy would be greatly restricted by legal interpretation. The Butler Committee refused to define "paramountcy" and contented itself with the sapient remark that "paramountcy is paramountcy". A definition in the Act would have led to all sorts of interpretations which would have varied with the usage, custom and legal treaties of each State.

Political Department.—In this connection it is necessary to say a few words about the Political Department. In spite of seven years of incessant discussions, the Political Department has maintained its powers intact. Under the Act it will come directly under the Viceroy and will continue to exercise its functions, and appoint Agents, Residents and other officers. It remains the main agency of the Crown in India for the exercise of paramountcy under the direct control of the Viceroy. The total strength of the Department

on October 1, 1933, was 108 posts. They include appointments to political agencies and residencies; the civil administration of the Chief Commissioner's Provinces of Coorg and Ajmer-Merwara; secretariat, district and judicial appointments in the Frontier Province and Baluchistan; political agencies in ceded territories; political agencies in the Persian Gulf, and a proportion of consular appointments in Persia; civil administration of Aden; and legations in Afghanistan and Nepal and Consulate-General at Kashgar. The White Paper provided that after the commencement of the Constitution Act the Governor-General will assume charge of the Department in his capacity of representative of the Crown in India for conducting the relations of the Crown with Indian States in matters not accepted as Federal by their rulers in their Instruments of Accession. It might be desirable to make the duties of Political officers in the Indian States interchangeable with those of Political officers employed by the Governor-General in the Reserved Departments of External Affairs.

The literature of Germany in the nineteenth century on the vexed question of sovereignty, federalism and other problems which have recurred with great frequency seems to confirm the view that in the case of growing and developing doctrine it is difficult to give a precise definition. Once this is done, paramountcy will cease to grow. It will be confined within the narrow limits of a legalistic system. On the other hand, there is a great deal to be said for the raising of this vague doctrine to the level of well-understood and definite law. For, unless it is defined, no State in India knows where exactly it stands. The Political Department will retain its hold, less by definite rules and treaties than by those mental processes and social courtesies which, when translated into legal phraseology, may mean everything to the ruler and nothing to the law court. Indeed a suggestion may be hazarded that some States supported the Federal scheme under the impression that it will "constitutionalise" the Political Department, and waited, Micawber-like, in the hope that something would "turn up" which might relieve them of some of the control exercised over them. They waited and waited until the picture was complete. The complete picture brought in disillusionment and disappointment.

Effects of Federal Administration on Indian States and Provinces of British India.—The entry of States into the Federation raises

numerous problems of great intricacy and complexity, and it would be dangerous to speculate as to the future. There are, however, certain broad features which emerge from discussions during the last seven years among the representatives of British India and Indian States which may be briefly sketched. There is a tendency in all Federations to encroach upon the right and authority of the units, and this tendency is specially marked in India. The chief reason, of course, is the existence of a highly centralised Government with a trained and efficient bureaucracy including in its ranks some of the most brilliant products of Indian administration. It is undoubtedly one of the most efficient bureaucracies in the world and only German and French bureaucracies can be compared with it in efficiency. None can compete with it in influence, power and prestige. The "autonomous" provinces must remain artificial units until they are able by experience and ability to consolidate their newly acquired rights. In the interval there will naturally be a rivalry between the Centre and the units. The restrictions imposed on the legislative, administrative and financial powers of the Federation over the units are so slight and ineffective that it will be almost impossible for any Province, however powerful and resourceful it may be, to resist serious encroachments by Federal authorities on its domain. The probabilities are that "centralism", or the highly centralised system which is functioning in the Government of India at the present time, will continue to function in certain provincial spheres with the same regularity, momentum and pervasiveness as it does now. The Governor-General will be inclined to back up the Federal Government in nine cases out of ten, and his special responsibilities on the one hand and paramountcy powers on the other will sometimes have to be placed at the disposal of the new Federal Government to assure its success. The Centre will gradually absorb the powers which have been grafted on the Provinces, and its activities will extend to the Indian States. It is impossible to prevent the rapid growth of Federal authority and jurisdiction in those States.

The rulers who supported the Federal proposals to escape from the trammels of paramountcy will then regard it as their sheet-anchor against the rising tide of democracy and the menace of Communism. Paramountcy, instead of being seriously affected by the new Act, may receive an accession of strength from the inevit-

able increase of Federal influence and power over Federal States. There is no Chinese wall between India and Indian States, and relations between these two parts of India have become so intimate and close during the last ten years that the fusion of States and British India in Federal subjects is bound to lead to the union of State and British Indian subjects on many political problems.

States' Dependence on the Crown will be intensified.—The States will be obliged in self-defence to knit closer their dependence on the Crown as their bulwark for support against internal disorders and strife. It will naturally be the duty of the Crown to decide how far and to what extent it is prepared to defend the rulers as against their subjects, for opinions on this issue have been by no means unanimous. Early English administrators, such as Sir John Malcolm and Sir Thomas Munro, had pointed out the serious effects of the system of subsidiary alliances initiated by Wellesley on the character and policy of protected States. There is, indeed, considerable justification for the view that the States will cling strongly to the Crown in proportion to the increased influence and power of the Federal Legislature. It is true that they themselves will form a part of the Government, and if they show qualities of statecraft and diplomacy in the parliamentary arena there is no reason why they should not be able to wield an influence out of proportion to their numbers. While British Indian members as a whole may find it difficult to organise themselves effectively in the Legislature, representatives of the States may, through the influence and prestige which their rulers undoubtedly exercise even in the twentieth century, be able to make all the States' representatives an effective force in both Chambers. This is not only possible, but probable. Even so, the great movements which are working in India with irresistible force and energy will prove too strong in the end, and on economic, social, and even political issues, the Nationalist movement will sweep everything before it. It is by no means certain that the States will remain a stabilising element for a long time, though it must be acknowledged that in the early years they will do so. In proportion as British India extends her influence and organises the States' subjects in political agitation the rulers will cling closer to paramountcy.

Administrative Relations between Federation, Provinces and States

The Act of 1919 introduced few changes in the structure of relations between the Provinces and the Centre. It is true that the powers of superintendence, direction and control which had hitherto been exercised over the Provinces were relaxed by the Central Government in the Transferred departments, but the transfer had produced no legal change in administrative, financial and legislative jurisdiction which the Centre exercised. The Transferred departments covered only a small field of provincial activity, and the Centre continued to mould and guide the Provinces in the field of law and order as well as in numerous other issues. The Federal scheme necessarily introduced a radical change in the division of legislative power. In the administrative sphere the change was not so great, but provincial autonomy could not be established without autonomy in administration, and the Act of 1935 has made this change to a certain extent. The new Act has, by a precise demarcation of relationship, transformed the old legislative sphere of the Centre and the units. Provincial autonomy postulates units with well-defined powers in the sphere of legislation, finance and administration. The Legislative List discussed above had dealt with the powers of the units and Federation respectively. It followed that the same principles must be reflected in the administration. Sir Samuel Hoare grasped this point and stuck to his conception of provincial autonomy with characteristic tenacity and ability.

The following extracts from the Minutes of Sir Samuel's evidence will make this clear:

Sir Austen Chamberlain: "Secretary of State, I apologise for intervening again, but have you really understood my suggestion? In the case of a matter reserved to the Federal sphere you give certain *powers to the Federal Government to see that the Acts of Parliament are enforced by Provinces*. You do that in matters which are reserved for Federal legislation. Why will not the same steps be applicable and sufficient in the case of legislation in the Concurrent sphere where Federal legislation overrules Provincial legislation?"

A.—"I feel, as at present advised, that the carrying-out of the intention that seems to be in Sir Austen's mind will be to under-

mine the Provincial administration of law and order, and I would particularly ask him once again to think of the difficulties that would arise under those heads."

To another question on the same subject he replied: "I first rely upon the responsibilities of the Provincial Government, and I rely upon the fact that the Federal Government and Provincial Governments will not be two Governments separated by an impassable gulf, but that the Federal Legislature will be composed to a great extent of Provincial representatives, and I believe, in many of these questions, there will be no difference between them at all." Sir Austen Chamberlain returned to the charge two days later, and drew the attention of the Secretary of State to the special responsibilities of the Governor, which include a responsibility to carry out the orders of the Governor-General if issued in his discretion. He suggested that this machinery might be utilised for enforcing such directions as the Governor-General might give in the Concurrent field.

Arguments against Concurrent List.—The argument ignored the vital fact that the matters in the Concurrent list are essentially provincial and are eminently the domain in which provincial control is desirable. It may be contended that uniformity of administration necessitates uniformity of legislation and, unless this is done, the standards of Provinces may show considerable variations. This may react upon Federal laws. The reply to this is clear. The Provinces are more interested in the social improvement and welfare of their citizens than the Centre, and no case has so far been adduced in which any Province has grossly neglected its duty. As Concurrent subjects are basically provincial there is no reason why a Province should injure its interests by failing to execute laws concerning, for example, welfare and conditions of labour, health insurance, unemployment insurance, etc. If it fails to adopt proper measures against the prevention of contagious diseases affecting men, animals or plants, it will ultimately pay heavily for its supine neglect. The White Paper, while providing for Federal legislation on these subjects, had wisely refrained from laying down any machinery for their enforcement, trusting to the good sense and self-interest of every Province. But members of the Joint Select Committee were not satisfied with this provision. They admitted that the objects of legislation in this field will predominantly be matters of

provincial concern and the agency to which such legislation will be entrusted will be almost exclusively provincial.' But they pointed out that uniformity of legislation is useless unless there is a reasonable uniformity of administration. They distinguished between Concurrent subjects which relate to law and order and personal rights and status, and those which relate to matters of social and economic legislation. For the first category no directions can be issued to provincial authorities such as courts or prosecuting authorities, but in the second case the Governor-General, acting in his discretion, can issue instructions to the Governors of Provinces regarding the manner in which Federal laws dealing with the Concurrent spheres in the second category should be enforced.

The executive authority of every Province is to be so exercised as not to impede the exercise of the executive authority of the Federation, and the executive authority of the Federation is to extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for the purpose. The distinction between two categories of Concurrent subjects is brought out in subsection (2), which lays down that the executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent List, and authorises the giving of such directions. A safeguard is, however, provided; for a Bill or amendment which proposes the giving of such directions is not to be introduced into or moved in either chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion. The Province is also bound to carry out any directions as to the construction and maintenance of communications of military importance. If the desired object is not attained, the Governor-General, acting in his discretion, may "issue as orders" to the Governor of the Province concerned the directions previously given, and he may also issue orders as to the way in which executive authority is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of the Province. Examples of Part II of the Concurrent List are old-age pensions, workmen's compensation, contagious diseases, provident fund, conditions of labour, etc.

Directions to Provincial Governors.—From the point of view of

constitutional theory the proposals are unexceptionable and no objections can be taken to them. As nexus of a new kind was established between the Federation and its constituent units, the duty of units to enforce the Federal laws was clear. The White Paper had suggested that directions to this effect should be given by the Governor-General as the executive head of the Federation, and when these directions relate to matters within the ministerial sphere the Governor-General should normally be acting upon the advice of his Ministers. It is one of the special responsibilities of the Governor (section 52, subsection (1), paragraph (g) of the Act) to secure "the execution of orders or directions lawfully issued to him under Part VI [dealing with administrative relations within the Federation, Provinces and States] of this Act by the Governor-General in his discretion". The position of the Governor will undoubtedly be delicate. While the Governor-General will use his special responsibility under subsections (4) and (5) and call upon the Governors to carry out a policy which is strongly advocated by Federal Ministers, the latter may find that Provincial Ministers are as strongly opposed to its enforcement. They may object to it because of the expense it will involve or the agitation it may create throughout the Province. The Governor is helpless, as he must carry out the "orders" of the Governor-General. The only course he can adopt is to dismiss his Ministers and enforce the order on his own responsibility. These two subsections are a serious infringement of provincial autonomy, and may place the Governor-General, the Governor and the Provincial administration in a very delicate position. They go far beyond the proposals of the White Paper. If the Governor-General, acting upon the advice of Federal Ministers, issues directions, which are subsequently changed into "orders", to a Governor, and if they are inconsistent with the general policy of the Provincial Cabinet, the Governor may be in the invidious position of simultaneously obeying the direction of the Governor-General and dismissing his Ministry. Nor will the Governor-General be in a very happy position. He will, in the first place, have to use his special responsibility for the execution of the policy of his Ministers. In the second place, he may, by doing this, considerably embarrass the Governor and create a political crisis in the Provincial Cabinet. This provision is inconsistent with the White Paper proposals and is fundamentally inconsistent with provincial autonomy. Moreover, the Provinces

will be saddled with the payment of costs incurred in the administration of concurrent subjects.

Obligations of Federation and Units are mutual.—The obligations of Units and Federation are mutual. The executive authority of every Province and Federated State is to be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State. "Without prejudice to any of the other provisions of this part [Part VI] of the Act, in the exercise of the executive authority of the Federation in any Province or Federated State, regard shall be had to the interests of that province or State" (Section 122). Provision is also made for delegation of authority to the Governor over excluded areas and Reserved departments. "The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction." Similarly, the Governors of Provinces may be directed to discharge as agents of the Governor-General such functions in connection with any Reserved department as may be specified in the direction (section 123).

The Act authorises the delegation of powers not merely to the Governors of Provinces, but also to Provincial Governments and Legislatures, or rulers of a Federated State with the consent of such Governments or rulers. Such powers may be conditional or unconditional, and may be conferred not merely on Governments or rulers, but also on the respective officers of the Provincial Governments and States. The Federal Legislature may confer powers and impose duties on a Provincial Legislature even with respect to a matter on which the Provincial Legislature has no power to make laws. Where powers have been conferred or duties imposed upon a Federated State or the respective officers, the Federation will pay to the latter any extra cost of administration incurred by the Province or State in connection with the exercise of those powers and duties (section 124).

Agreements may, and if provision has been made on their behalf by Instruments of Accession shall, be made between the Governor-General and the ruler of a Federated State for the exercise by the ruler or his officers of administrative functions relating to a Federal law. The Governor-General is empowered to see that such agreement is carried out in accordance with the policy of the Federal

Government, and may issue such directions to the ruler as he thinks fit. All courts are to take judicial notice of any agreement made under this section (section 125).

Varieties of Delegation of Powers.—The Act makes a new departure by providing for comprehensive devolution of authority upon the Governments and Legislatures of Provinces. This is one of the most interesting and useful provisions, and brings about closer relations between various organs of the Centre and its units. No other Constitution has carried out this principle so consistently. In the first place the Governor-General may require the Governor to act as his agent in relation to defence, external relations and ecclesiastical affairs; he may confer powers on the Government of a Province or ruler of a State in certain cases. So far, the change introduced is not substantial, as the Provincial Governments have acted as agents of the Central Government by the Act of 1919. The third category makes a bold departure from the present practice whereby the Federal Legislature may confer powers on a Provincial Legislature or a Federated State. This is an excellent provision, as it will introduce an element of elasticity in the Constitution and it will make it possible for Provincial legislation to be passed in Concurrent or Federal subjects. It is not quite clear whether the Federal Legislature could, under this provision, delegate its powers over a subject so effectively as to transfer a Federal or Concurrent subject to the Provincial list. Probably this will not be allowed, as it would be inconsistent with the basic principles of the Act. But there is nothing in the section which prevents the administration and even legislation on such subjects by Provincial Legislatures for a limited period. The relation of the Federation to the Federated States is determined by sections 125 and 128. The Viceroy will act in a double capacity. He can issue directions to States which are negligent in enforcing Federal Laws. If such directions are not acted upon, he can, as representative of the Crown in India, use his powers of paramountcy by reinforcing his position as Governor-General and bring about efficient administration of Federal subjects in States.

Regarding the States, it is clear that the Governor-General will be the authority through whom the administration of Federal laws will be effected in Federal States. Every State which enters the Federation must sign an agreement to this effect, for without such

an agreement the Federal laws will have no meaning or force. But the Federal Government cannot directly issue such directions. The Governor-General alone can do this. Besides issuing instructions the Governor-General is authorised to satisfy himself by "inspection or otherwise" that such laws are administered in the States.

Section 126 goes too far, and seriously affects Provincial rights. The *raison d'être* of concurrent subjects was uniformity of the legislation. Even the Joint Select Committee admitted the need for restricting the powers of the Federal Government in this sphere. The restrictions suggested by the White Paper on the power of the Federal Government in this respect were whittled down, and the Federal Government and the Governor-General will thus exercise considerable administrative and legislative powers over the Provinces. If any dispute arises under section 128 whether the executive authority of the Federation is exercisable with respect to any matter or as to the extent to which it is exercisable, the question may, either at the instance of the Federation or the ruler, be referred to the Federal Court for determination in exercise of its original jurisdiction under the Act (section 128).

Interference with Water Supplies.—The White Paper proposals of the Government had made no provision regarding inter-provincial disputes relating to water supply. This is a Provincial subject, and is included as No. 19 in the Provincial List. Disputes have occurred in the past concerning the supply of water, and the Government of India has appointed Committees on various occasions to investigate and report upon them. As the subject will be exclusively provincial, and disputes may seriously affect inter-provincial relations, an impartial authority was needed. The evidence of Sind delegates before the Sind Sub-committee of the Joint Select Committee in 1933 brought out the importance of such a tribunal. Accordingly the omission in the White Paper has been rectified, and sections 130-34 of the Act deal comprehensively with the problem. If it appears to the Government of a Province or the ruler of a State that the interests of that Province or State, or of any inhabitants thereof, or the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been or are likely to be affected prejudicially by executive action, or failure of such action, with respect to the use, distribution or control of water from that source the Governor-General

may appoint a Commission to investigate the complaint. After considering the report made to him by the Commission, the Governor-General shall give such decision and make such order in the matter of the complaint as he may deem proper. All Acts of a Provincial Legislature or a State which are repugnant to the order shall, to the extent of the repugnancy, be void. Before the Governor-General gives his decision the Province or Federated State may request the Governor-General to refer the matter to His Majesty in Council, and effect shall be given by any Province or State affected to any order made under the section by His Majesty in Council or the Governor-General. Provincial or State laws which are repugnant to such order shall be void to the extent of repugnancy. Close examination of the White Paper had revealed another lacuna in the scheme.

Advantages of an Inter-Provincial Council.—The need for inter-provincial coordination and cooperation in many directions has been frequently felt since the Reforms of 1919, and informal conferences of Provincial representatives have been held at various times. Even the most fervent advocates of provincial autonomy have pleaded strongly for such a body. But a permanent organisation was necessary, whereby the experience and ideas of different units could be pooled. The author suggested the need for such a body in a Note to the Third Round Table Conference. He took the opportunity to express the same views in the form of questions to Lieutenant-Colonel Dunn, who gave evidence before the Parliamentary Joint Select Committee on November 14, 1933, along with Colonel Baird and Lieutenant-Colonel Broome. All the three witnesses were retired members of the Indian Medical Service.

The Note to the Third Round Table Conference stated:

"There was considerable agreement in regard to provision in the Constitution for a council of representatives of the units and the Federal Government. Such a Council had, in fact, been suggested in paragraph 11 of the Report of the Federal Finance Committee. It should be kept in close contact with all matters with which the autonomous Provinces within their independent spheres are concerned . . . Such a Council would also be useful in harmonising the administrative relations between the Federal Government and the units."

The following is extracted from the Minutes of Evidence published by the Joint Select Committee:

DR. SHAFA'AT AHMAD KAHN: "Colonel Dunn, your object, I suppose, is coordination, is it not?"

A.—"Yes."

"Does it necessarily involve control?"

A.—"I think I explained how it will be possible for two contiguous Provinces with a Director of Public Health to control cholera travelling by rail."

"Supposing you had an Inter-provincial Council of Health which met at the Centre and discussed common policy and supposing the Inter-provincial Council arrived at certain principles concerning the whole of India, would it not be possible to attain what you desire on a voluntary basis of this kind rather than on a basis in which you completely emasculate provincial autonomy?"

A.—"I do not agree that it would completely emasculate provincial autonomy."

DR. SHAFA'AT AHMAD KHAN: "That is what we think on this side."

All Federal Governments have improvised either formally or informally useful devices for exchange of views and information, and meetings of the representatives of the Provinces and the Centre have been regularly held in many countries. The Conference of the Prime Ministers of Australian States has proved most useful in coordinating the legislative and administrative activity of the Commonwealth. According to the Report of the Commission on the Australian Constitution, such conferences have been of great value both to the units and the Federation. They have served to clarify ideas, remove misunderstandings, and encourage cooperation in many spheres of legislation. In Canada grants have been made for roads, which are essentially a Provincial subject; while in educational administration the Dominion Government has found it necessary to supplement the Provincial funds by subsidies from the Centre. Canada passed an Act in 1919 creating a Dominion Council of Health to coordinate the activities of provincial administration. Such Inter-provincial Councils must be based essentially on the consent of the units, and no compulsion should be applied. There is undoubtedly a danger to provincial autonomies in the formation of such bodies, as they may tend to usurp the

provincial field, but this can be avoided by basing it entirely on voluntary principles and rigidly defining its powers and functions. By this means the Provinces will be able to draw upon a mass of experience which will be of the greatest possible value to them in their programme for education, local self-government, and public health. The Agricultural Research Council in India is a very good example of the way in which constructive cooperation by the Provinces has proved exceedingly useful to them.

Provision for Inter-Provincial Discussions of Disputes.—The Joint Select Committee advocated such cooperation and the Act provides for the establishment of an Inter-provincial Council to (1) enquire into and advise upon the disputes which may have arisen between the Provinces, (2) investigate and discuss subjects in which some or all of the Provinces or the Federation and one or more Provinces have a common interest, or (3) make recommendations upon any such subjects for coordination of policy and action. "It shall be lawful for His Majesty in Council to establish such a council and to define the nature of the duties to be performed by it and its organisation and procedure" (section 135). This section is based entirely on the recommendations of the Joint Select Committee. Provision may be made for representatives of Indian States to participate in the work of the Council. The Act has gone farther than was intended by the supporters of these proposals, and has vested the new body with the right to investigate into and advise upon disputes between Provinces. If it is intended to provide for representatives of all Provinces to participate in its work—and it must include them, otherwise it will become unrepresentative and worthless—then it is fundamentally wrong to entrust such a body with the investigation and adjudication of inter-provincial disputes. For such a purpose, an *ad hoc* Committee appointed by the Governor-General in his discretion would have been eminently suitable. If such disputes are referred to the Council, they will so divide and disorganise the Inter-provincial Council as to make it practically worthless. Inter-provincial disputes are likely to introduce an element of considerable friction and even cleavage into the relations between different units, and it is not an effective method to make parties to such disputes judges of their own case.

CHAPTER IV

SAFEGUARDS; COMMERCIAL DISCRIMINATION

SAFEGUARDS

Principles of Safeguards.—The word "safeguard" has played such a large part in public controversies that a few words on it may not be amiss. The Second Report of the Federal Structure Committee was produced on the basic conception that the Constitution will "recognise the principle that, subject to certain provisions, the responsibility for the Government of India will in future rest upon Indians themselves" (paragraph 8). The safeguards were designed only for a transitional period, and the framers of the Constitution, both Indian and English, never regarded "safeguards" as immutable. They were not as the laws of Medes or Persians. Everyone thought that a day would come when the need for such safeguards would disappear, and they would fall into desuetude. The statement of Mr. Ramsay MacDonald at the final plenary session of the First Round Table Conference, dated January 19, 1931, on behalf of His Majesty's Government embodies the mature and deliberate policy of the Government on this issue: "The view of His Majesty's Government is that responsibility for the government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights. In such statutory safeguards as may be made for meeting the needs of the transitional period it will be a primary concern of His Majesty's Government to see that the Reserved powers are so exercised as not to prejudice the advance of India through the new Constitution to full responsibility for her own government."

The declaration of His Majesty's Government merely affirmed principles which are implicit in the Federal scheme. They were

enunciated with great clarity and lucidity in the Second Report of the Federal Structure Committee. The ultimate ideal of "full responsbility for her own government" has never been repudiated by the British Government, and in 1933 Sir Samuel Hoare, in his evidence before the Joint Select Committee, reiterated that ideal. The Federal Structure Committee stated in paragraph 11 that the "broad statement of the principle of responsible government at the Centre, quoted in paragraph 8 above, which will be the achievement of the Constitution now to be framed, requires some qualification. There was general agreement in the Sub-committee that the assumption by India of all the powers and responsibility which have hitherto vested in Parliament cannot be made at one step, and that during a period of transition—

"(i) The Governor-General shall be responsible for Defence and External Relations (including relations with the Indian States outside the Federal sphere), and that

"(ii) in certain situations, hereafter specified, which may arise outside the sphere of those subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decisions."

Application of Safeguards.—The Second Round Table Conference applied these reservations to the special problems of financial and commercial safeguards, and the Fourth Report of the Federal Structure Committee contained broadly the points elaborated in the First Round Table Conference. The Third Round Table Conference discussed the question of special responsibility of Governors and Governors-General in greater detail than was possible in the first two Conferences. There was general agreement regarding the principles underlying the responsibilities of heads of the Federation and the Provinces. Indeed, there were few persons in the First Round Table Conference who disagreed with the necessity for vesting in these officials a reserve of power to be employed in emergencies. Once the principle of responsibility is accepted, the need for implementing that responsibility in its financial and legislative aspects must also be accepted. Unless the Governor-General is empowered to carry out his special responsibilities financially as well as legislatively, the power would be meaningless, barren and futile. While the principle was accepted, there was undoubtedly disagreement as regards methods and detail. The objections of

British India to the manner in which the basic principle has been applied are marshalled in some very lucid and clear paragraphs of the Memorandum to the Joint Select Committee. No impartial man can deny the overwhelming force and vigour of their criticism of the safeguards as adumbrated in the White Paper. The Indian delegates to the Joint Select Committee were practical. They were imbued with the spirit of cooperation and most of them were experienced parliamentarians. They had been cooperating ever since the First Round Table Conference at considerable risk to their popularity, influence and following in their country. While they were convinced of the baneful effects of the policy of destruction, they were no less convinced of the need for recognition of the legitimate claims of India. While they conceded the principle of some of the safeguards, they objected to others. It is unnecessary to discuss the points, as the Memorandum summarises the main objections and is readily available.

Having stated the views of the Indian delegates, let us now turn to the general propositions which the Third Round Table Conference sketched. Here it will be sufficient to bring them into one focus, so that the general view of the safeguards may be obtained.

Emergencies.—The executive head of every Government must have some reserve of power in emergencies. Such a right is inherent in every Constitution and emergency powers are necessary for the purpose. It is no doubt true that constitutional government implies severe restriction of such powers; but it cannot be denied that certain outbursts of lawlessness and disorders which are not localised but have assumed an all-India character must be checked by the emergency powers of the head of the Executive. If the principle of such powers is accepted—and every Constitution in the world provides for it—then the Governor-General or Governor must be given certain authority to carry out those obligations. If he is to implement the policy underlying these powers he must have the necessary authority to apply it in the administrative, legislative and financial spheres. Certain consequences flow irresistibly from these principles and it will be best if we deal with them separately.

The Governor-General's relation with his Ministers.—In certain matters such as Reserved departments, Ministers will not be entitled to tender advice to the Governor-General. These matters

will be administered by the Governor-General on his sole responsibility. But no Governor-General can conduct the administration of a sub-continent in watertight compartments. The isolation of Reserved departments from the Transferred is administratively impossible; even if it were possible, it would be suicidal. An able Governor-General would treat the administration as an organic whole. Hence, though legally the Governor-General will be solely and personally responsible for the Reserved departments, in actual practice there will be the fullest opportunity for mutual discussions and consultation. Practical experience dictates the necessity for co-ordination of policy and administration in the Federal Centre. The administration is indivisible and no law can bifurcate it.

This principle is laid down in the Instrument of Instructions to the Governor-General, which states that although it is provided in the Act that the Governor-General shall exercise his functions, in part in his discretion, and in part with the aid and advice of Ministers, nevertheless it is "Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself and his Counsellors and Ministers".

With regard to his relations with his Ministers outside the ambit of the Reserved department, they will have a constitutional right to tender advice, and the Governor-General will normally be guided by it, unless it impinges on his special responsibility. The latter is not a separate department maintained by the Governor-General but refers to certain indicated purposes, and for securing these purposes he will exercise the powers conferred upon him by the Act, as well as the directions contained in his Instrument of Instructions. The Instrument of Instructions, therefore, assumes a special importance in the new Act. If the Minister's advice be inconsistent with special responsibility he will act in such a manner as he judges requisite for its fulfilment.

The Governor-General's relation with the Legislatures.—The Governor-General's special responsibility might necessitate action normally lying within the functions of the Legislature. The principle which underlies the Act is that wherever the Governor-General's responsibilities for the Reserved departments or his "special responsibility" are involved, he should be empowered not only, as has been explained, "to act without or, as the case may be, contrary to, the advice of his Ministers", but also to counteract an

adverse vote of the Legislature, whether such a vote relates to the passage of legislation or to the appropriation of funds. In such a case the necessary powers should be granted to the Governor-General for the fulfilment of his responsibility. He could no doubt adopt the method outlined in section 67 (a) and (b) of the Government of India Act of 1919 and incorporated in the Act of 1935, and restore or reduce the demands for grants. Other methods are indicated in the various sections of the Act and have already been discussed in the chapter on "The Federal Centre". He is empowered in certain circumstances to enact forthwith as a Governor-General's Act a Bill containing such provisions as he considers necessary. He also retains his ordinance-making power to meet temporary emergencies on the lines of section 72 of the Act of 1919. In case of failure of constitutional machinery, provisions are embodied in section 45 whereby he can issue a proclamation and assume to himself all or any of the powers vested in or exercisable by any Federal authority.

The responsibility of the Governor-General will therefore be of two kinds—an exclusive responsibility for the administration of Reserved departments, and special responsibility for certain defined purposes outside the range of the Reserved departments.

It is unnecessary to deal with the Governor's special powers and responsibilities as the principles adumbrated above are, *mutatis mutandis*, applicable in all respects to Governors of Provinces. There is, however, one difference. There will be no Reserved departments in the Province, and to that extent the Governor's special responsibility will wear a different aspect. He has no exclusive responsibility for any Reserved department, except the excluded areas. He will, however, have a special responsibility for the execution of orders passed by the Governor-General, as the latter will exercise superintendence over the actions of Governors in the exercise of their special responsibility. The Governor is responsible to the Governor-General and the latter to the Secretary of State in the sphere of special responsibility. These general principles govern the special responsibilities of the Governor-General and the Governor, and are applicable to the specific subjects of financial and commercial safeguards.

Financial Safeguards.—Financial and commercial safeguards had loomed large in the deliberations of the Second Federal Structure

Committee, and paragraph 18 of the Report of the Committee had stressed the need for the establishment of a Reserve Bank which would be free from political interference and would be entrusted with the management of currency and exchange. The recommendations of the Committee were considered in detail by a Committee consisting of representatives of Indian Legislatures and British financial interests in London, and it formulated comprehensive proposals for the establishment of a Reserve Bank. A similar proposal was made in 1928 by the late Sir Basil Blackett, the then Finance Member, but it was rejected by the Assembly.

The Reserve Bank Bill, based on the Report of the Committee, has been passed into law by the Assembly, and the Reserve Bank has been established. The constitutional position of the Ministry regarding financial arrangements to be made by the future Federal Government was sketched by the Third Round Table Conference in a language of caution and prudence. But the Committee on Financial Safeguards had given an exceedingly clear exposition of policy and the Report was the foundation of subsequent discussion and legislation on the subject. The Committee on Commercial Safeguards stated that they "are conscious of the difficulty in any country of reconciling the introduction of far-reaching constitutional changes, necessarily affecting finance, with the highly important requisite that the confidence of the world markets and of the investor in future financial stability should be maintained. They believe that the Ministry of the Federation will pursue a course of financial prudence and that the Federation will rapidly establish an independent credit of a high class. Though, in the future as in the past, it will naturally be the aim to obtain internally, as far as possible, such loan funds as may be required, India will doubtless find it necessary to develop a credit that will enable her also to appeal with confidence to external markets. Assuming that prudent financial policy is pursued by the Federation, the Committee feel that there will be no need to call the proposed safeguards into operation. Their existence should, however, afford reassurance to the investing public at a time when far-reaching developments in the provincial and financial sphere are being introduced."

It is necessary to bear these recommendations in mind when dealing with section 12, paragraph (b) of subsection (1) of the Act, which lays down that the Governor-General shall have the follow-

ing special responsibility: "the safeguarding of the financial stability and credit of the Federal Government". The Governors of Provinces have not been vested with this power, mainly because the Central Government alone has direct dealings with the British investors in the United Kingdom, and moneyed interests in London have a great stake in the finances of the Indian Government. Though the responsibility will be primarily that of the Governor-General, it is hardly likely that this power will be exercised by him without consulting his financial adviser and the Finance Minister.

The Basis of Commercial Safeguards.—Commercial safeguards have a peculiar importance owing to the general desire in India for vigorous pursuit of economic nationalism. Political self-government must include the right to build up the key industries of India by the imposition of tariffs against foreign goods. The controversies of Canada over tariffs with the British Colonial Office from 1867, the complete triumph and vindication of Canadian claims, and the tacit withdrawal of all pretensions which had been advanced with insular self-complacency by a succession of British statesmen, and the commercial freedom which the Irish Free State, Australia and other Dominions enjoy in the commercial spheres, point unhesitatingly to the need for self-government in commerce. It was perfectly clear to those who had pondered over the question that His Majesty's Government would not be prepared to concede any power in the Centre unless they were assured that British capital and industry in India would be amply safeguarded. No discriminatory measure, by whomsoever passed, would be agreed to by any party in England and safeguards would have to be devised to prevent the possibility of such a measure being passed by the Indian Legislature. Discussions had, in fact, been initiated on this subject in 1928, and the Nehru Report had made tentative efforts to remove certain misunderstandings and suspicions from the minds of European capitalists. Considerable progress was made by the Minorities Committee of the First Round Table Conference; the Second Round Table Conference had also given active attention to the subject. The Third Round Table Conference dealt with it in greater detail and thoroughness, and the Joint Select Committee put the coping-stone to the edifice and, stripping the phraseology of the Third Round Table Conference of

its trappings, expressed unequivocally and vigorously what had been suggested delicately and tentatively.

The basic principles of the conclusions on commercial discrimination are to be found in the Report of the Committee of the Third Round Table Conference on Commercial Safeguards. Sections 111 to 117 of the Act would be inexplicable without an analysis of the main recommendations of this Committee. The Committee proceeded upon the basis of paragraphs 16 to 26 of the Federal Structure Committee's Fourth Report in 1931, and agreed to the principle that the avoidance of discrimination could be achieved by specific provisions in the Constitution prohibiting discrimination. The Committee agreed that legislative discrimination should be dealt with by provisions in the statute. A section of the Committee did not wish to extend this right to prevention of discrimination by administrative action, as this would mean impairment of the authority of Federal and Provincial Ministers. The general view of the Committee was against such restrictions. The Governor-General would be entitled in the last resort to differ from his Ministers and act solely on his responsibility.

As regards persons and bodies to whom these provisions should apply, a distinction was at one stage intended to be drawn between those carrying on business in and with India. It was suggested that, in the case of companies, protection on the lines indicated above should be confined to companies registered in India. Such an arrangement would have involved many complications, as it would have led to double registration by companies originally registered in the United Kingdom, which would have inevitably given rise to a great deal of legal confusion and conflict of jurisdiction. The majority of the Committee dealt with this question on the basis of reciprocity. This principle has been embodied in the Act. The Committee agreed that bounties or subsidies should be available to all firms or individuals engaged in a particular trade or industry at the time the Act was passed. As regards the companies entering the field after that date, the Government should be at liberty to impose the conditions of eligibility recommended by the External Capital Committee. "It would, of course, be a question of fact whether the purpose of the subsidy or imposition of particular conditions, though not discriminatory in form, was, in fact, intended to penalise particular interests, and the Governor-General or Governor,

or the courts, as the case may be, would have to form a judgment on this question in deciding whether a proposed measure was or was not discriminatory." They concluded with the hope that "the proceedings and policies of the future Indian Governments will be informed by a spirit of mutual trust and goodwill which will render it unnecessary to call into play the provisions of the Constitution to be framed on this matter." The Report of the Committee was "noted" by the Third Round Table Conference, and its main provisions were embodied in the White Paper.

Commercial Discrimination

I do not wish to deal at length with a subject that has aroused heated controversy both in England and in India. The Minorities Committee of the First Round Table Conference adopted the following resolution: "The principle is generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India and the rights of Indian-born subjects". The resolution was subjected to considerable criticism in certain quarters in India, and Indian delegates who had agreed to it were attacked on many occasions in 1931. But the point of view of the British mercantile community must also be kept in view. We must admit that the European commercial circles were disturbed by the irresponsible talk in which certain sections had indulged in 1931. The no-rent campaign was launched in Oudh and there was talk of expropriation of property. No responsible leader of the Congress approved of such wild statements. Though it must be confessed that the Congress as a body never identified itself with such policy, some of its leaders were actually engaged in organising an agrarian movement in some parts of the United Provinces. The speech of Mahatma Gandhi at the Round Table Conference on November 19, 1931, at a meeting of the Federal Structure Committee did not tend to reassure the moneyed interests. He referred to "the taking over by the incoming Government of obligations that are being to-day discharged by the British Government. Just as we claim that these obligations must be examined by an impartial tribunal before they are taken over by us, so should existing interests be subject to judicial scrutiny when

necessary. There is no question, therefore, of repudiation, but merely of taking over under examination, under audit."

Mahatma Gandhi's Policy.—The policy thus advocated by Mahatma Gandhi on behalf of the Congress was not completely in accordance with the principles that underlay the Nehru Report. Nor did his formula help the delegates in arriving at a satisfactory compromise on this delicate issue. He stated that "no existing interest legitimately acquired and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests". If this formula was given statutory expression, it would dislocate the Indian social structure, let loose forces of disruption and even anarchy in the land, and seriously jeopardise all attempts at Indian social harmony. Had these sentiments been expressed at a mass meeting no importance would have been attached to them. But they were addressed to a Constitution Committee on behalf of the most powerful political body in India. Nor did Mahatma Gandhi's reference to the need for converting the "white elephant which is called New Delhi into hospitals for infectious diseases like plague and cholera" tend to reassure the stable elements of Indian society. He stated that under a National Government the Courts will decide the titles to property, and "when complaints are made that there are legitimate rights acquired it should be open to the courts of law to examine these rights. I am *not* going to say to-day that, in taking over the Government, I shall examine no rights whatsoever, no titles that have been acquired." If this principle is consistently applied throughout India, it will throw usage, convention, security and tranquillity to the winds, and introduce confusion unparalleled in its magnitude and unprecedented in its effects.

The Nehru Report was cast in a different mould and prescribed different measures. It was adopted by the Congress in 1928 and became an integral part of the Congress programme. It is true it was shelved in the following year at Lahore. The Congress, however, has never repudiated its formula on commercial discrimination, which was acceptable to a large number of Indian industrialists. The treatment of the subject showed statesmanship and vision, and it is highly probable that, if negotiations had been carried on on that basis with European capitalists, a satisfactory agreement might have been arrived at. Such an agreement would have

represented a triumph of common sense and good-will. Unfortunately, owing to causes which it is unnecessary to enter here, opinion began to stiffen on both sides and by 1931 negotiations had reached an impasse.

Nehru Report on Commercial Safeguards.—The Nehru Report stated that "as regards European commerce, we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India. . . . European commerce, like Indian commerce, has had to bear in the past, and will have to bear in the future, the vicissitudes inseparable from commercial undertakings on a large scale, and no Government in the West or anywhere else has been able effectively to provide permanent and stable solutions for conflicts between capital and labour. . . . If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of these interests Europeans should formulate their proposals, and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution."

The Nehru Report states in clause 6 that all citizens "are equal before the law and all possess equal civic rights". A "citizen" was defined as "one who, being a subject of the Crown, carries on business or resides in the territories of the Commonwealth" of India. These provisions offered an excellent basis for commercial agreement between India and England, and the Report of the Minorities Committee quoted above was a step in the right direction. The Fourth Report of the Federal Structure Sub-committee went into this question and dealt with it, in paragraphs 16 to 26. The Committee accepted and reaffirmed the principle that equal rights and equal opportunities should be afforded to those that are lawfully engaged in commerce and industry within the territory of the Federation. They were of opinion that no subject of the Crown who may be ordinarily resident or carrying on trade or business in British India, should be subjected to any disability or discrimination, legislative or administrative, by reason of his race, descent, religion or place of birth, in respect of taxation, the holding of property, the carrying-on of any profession, trade or business, or in respect of residence or travel. The expression "subject" must here be understood as

including firms, companies and corporations carrying on business within the area of the Federation, as well as private individuals. The Committee were also of opinion that, *mutatis mutandis*, the principle should be made applicable in respect of the same matters so far as they fall within the Federal sphere, in the case of Indian States which become members of the Federation and the subjects of those States.

With regard to method, the Committee stated that the Constitution should contain a clause prohibiting legislative or administrative discrimination, and defining those bodies to whom the clause is to apply. The proposals of these Committees were embodied in the White Paper and were subjected to expert scrutiny by the Joint Select Committee. The Committee agreed that on the question of principle there has always been a substantial measure of agreement in India, and representatives of British commercial interests had assured the Committee that they asked for no exceptional or preferential treatment for British trade.

Views of the Joint Select Committee.—The Committee referred to "utterances which could not fail to give rise to suspicions and doubts". The recommendations of the Committee stiffened the provisions of the White Paper. They recommended comprehensive provisions for safeguarding the position of the European commercial classes in India, and adduced reasons for their attitude. It is unnecessary to deal with them here. The Committee do not seem to have given sufficient consideration to the widespread effects of measures which could not but produce a feeling of irritation among persons who wished to build up, by means of scientifically regulated tariffs, industries in which India had held a leading place. Again, it is difficult to resist the conclusion that the Committee did not take sufficiently into account the help and cooperation which many stable elements in the Legislature are prepared to render in opposing unjust and iniquitous measures. They completely ignored the point that there is a fund of good-will and common sense even in the extreme section of the Indian public which is the surest guarantee against any vindictive or tyrannical measures. No Indian Assembly, howsoever constituted, could ignore this. It is improbable that the Federal Legislature would be dominated by opponents of British commerce in India. Nor do the Committee seem to have visualised the possibility of an organised attempt being made by Indians,

unconnected with any capitalist organisation, for the sole purpose of raising the industrial level of India to that of a commercially advanced Asiatic country. For this purpose, the help and support of British capital and British brains would be essential. Cooperation on an equal footing is essential, and such cooperation negatives the idea of discrimination. The progress of economic thought, and particularly Economic Nationalism, which bases itself on the brilliant work of German national economists such as List and others, has emphasised tariffs as an essential means for the protection of indigenous industries. The whole history of the United States revolves round her tariffs. Why should India be deprived of a right which all nations have exercised for the revival of their commerce? It must also be said that some of the sections of the Act are based on a misunderstanding of the feelings of all sensible Indians on the subject. No occasion will arise for putting them into operation, for the simple reason that no responsible Indians would ever think of resorting to measures against which they are directed. The Committee recommended that (1) no law restricting the right of entry into British India should apply to British subjects domiciled in the United Kingdom; (2) and no law relating to taxation, travel and residence, the holding of public office, the carrying on of any trade, business or profession in British India, should apply to British subjects domiciled in the United Kingdom, in so far as it imposes conditions or restrictions on such subjects. These provisions apply to British subjects domiciled in the United Kingdom who wish to enter British India. "Law" includes any regulations, bye-laws, etc., made by any authority in India, having the force of law.

British Subjects Domiciled in the United Kingdom.—The Simon Commission had raised a technical objection to any attempt to define discriminatory legislation in a constitutional document, but the Federal Structure Committee pointed out that an experienced parliamentary draftsman would be able to devise an adequate and workable formula. Section III lays down that a British subject domiciled in the United Kingdom shall be exempt from so much of any Federal or Provincial law as (a) imposes any restriction on the right of entry into British India, or (b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, resi-

dence, the acquisition, holding or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession. Provided that no person shall be entitled to exemption from any such restriction, if British subjects domiciled in British India are by the law of the United Kingdom subject in the United Kingdom to a like condition, liability or disability imposed in regard to the same subject matter by reference to the same principle of distinction (section 3). This provision will not apply to "undesirable persons", whom both countries will have the right to deport or exclude from their territories. "Law" here means any ordinance, order, bye-law, rule or regulation passed or made after the passing of this Act, and having by virtue of any existing Indian law or Provincial and Federal laws the force of law, but save, as aforesaid, nothing in these operations shall affect the operation of any existing Indian law (section 117).

Section 112 prohibits discrimination in taxation against British-domiciled subjects in similar terms. Sections 113-116 deal with companies incorporated in England and in India, and subsidies and bounties for encouragement of trade or industry. Regarding the former, the Act lays down that a company incorporated now or hereafter in the United Kingdom should, when trading in India, be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent, place of birth of the directors, shareholders, or of the agents and servants of such companies. Regarding (2) companies incorporated in India, the Act lays down that British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated now or hereafter in India should be deemed to have complied with any condition imposed by Indian law upon companies so incorporated relating to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of directors, shareholders, agents or servants.

Shipping Companies.—The Act applies the same principles to shipping companies. Section 115 lays down that no ship registered in the United Kingdom shall be subjected by law to any treatment affecting the ship herself, or her master, officers, crew, passengers or cargo, which discriminates against such ships, except in so far as

ships registered in British India are for the time being subjected by or under a law of the United Kingdom to treatment of a like character.

Section 116 deals with subsidies for the encouragement of trade or industry. It enacts that notwithstanding anything in any Act of the Federal or Provincial Legislatures, companies incorporated, whether before or after the passing of this Act, under the laws of the United Kingdom and carrying on business in India, shall be eligible for any grant, bounty or subsidy payable out of the revenue of the Federation or a Province to the same extent as companies incorporated by or under the laws of British India are eligible therefor. The principle of reciprocity is again applied, and such British companies in India are declared incapable of receiving such grants or bounties if companies registered under the laws of British India are subjected to discrimination under British laws. If a British company engaged in that branch of the trade or industry which the Indian Legislature desires to encourage by subsidy is not engaged in that trade, it will not be eligible for such a subsidy unless and until (1) the company is incorporated by or under the laws of British India; (2) such proportions not exceeding half the members of its governing body are British subjects domiciled in India or subjects of a Federated State; (3) the company gives reasonable facilities for the training of British Indians or subjects of a Federated State.

The Joint Select Committee of 1919 had declared that nothing is more likely to endanger the relations between India and England than a belief that India's fiscal policy is directed from Whitehall in the interests of the trade of Great Britain. A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. Whatever be the right fiscal policy in India for the needs of her consumers as well as for her manufactures, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. The Indian mercantile community has invariably attached supreme importance to this principle.

The provisions discussed above are an indication of the anxiety and apprehension which the members of the Joint Select Committee held on a subject in which they felt that vital interests were

involved. No person who has followed the trend of discussions on this thorny issue can help being struck with the repeated failure of attempts to arrive at a settlement of this issue. Had the lead given by the Minorities Sub-committee of the First Round Table Conference been maintained, a *via media* would undoubtedly have been discovered and a satisfactory solution embodied in the Act. The basic principle of reciprocity is clearly expressed in section 118, whereby if a convention is made between the Federal Government and the British Government guaranteeing reciprocity of treatment to British and Indian subjects and companies in India and the United Kingdom respectively, an Order in Council may suspend the operation of some or all of these provisions.

Fiscal Autonomy.—The Government of India in their Despatch on Constitutional Reforms, 1930, admitted the validity of Indian claims to fiscal autonomy. They pointed out in paragraph 119 that "there are enterprises which Indians regard as national and which at present are mainly or wholly in British hands. It would be idle to expect that they would be content for an indefinite period to remain without their appropriate share in the conduct of these enterprises, and if the methods at present proposed in order to justify Indian hopes must be ruled out because they involve injustice or are inconsistent with the position which Britain holds in India, Indians may fairly ask that the British business community should cooperate in finding other methods to bring about the desired result." It seems only fair that the Indian Government should be given sufficient freedom to make special adjustments in the case of special industries which are of national importance owing to the nature of the industry or to the stage of industrial development through which a new National Government is passing. List, the great national economist, had pointed out in his brilliant study of national economy the essential difference in the needs and requirements of German and English trade in the nineteenth century. England then championed free trade as her industrial organisation had acquired almost an impregnable position in the world and was able to face the whole world; Germany, on the other hand, constructed a ring-fence to protect her nascent industries. The German commercial system was based essentially on the need for protection of German industries, and the tariff history of the United States throughout the nineteenth century

brings out this tendency vividly. The achievements of the National Government in England since 1931 point irresistibly to the same conclusion. The introduction of quotas, tariffs, subsidies and all the apparatus of a protectionist country has led to a complete overhauling of the old system.

The Instrument of Instructions to the Governor-General charges him with the duty of preventing measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment. The competence of the Federal Government or the Legislature to develop their own fiscal and economic policy is not impaired. The discriminatory treatment covered by his special responsibility includes both direct discrimination and indirect discrimination by means of differential treatment of British trade in India. If tariffs or restrictions are imposed with a view to injuring the interests of the United Kingdom, it will be the special responsibility of the Governor-General to prevent the imposition of such tariffs. In taking action in these matters the Governor-General will act in his discretion.

The Practice of Professions.—In exercising his discretion, the Governor-General may withhold his assent from any measure which, though not discriminatory in form, would have a discriminatory effect. The Joint Select Committee made it clear that the discretion of the Governor-General in withholding assent from such Bills will be free and unfettered. The Act also safeguards the right of persons holding United Kingdom qualifications, who are now practising professions in India, to follow their professions in India without restraint. They will have a right to continue to practise notwithstanding any future action, by any Indian Act, requiring Indian qualifications as a condition of practice. The Act further lays down that a British subject domiciled in the United Kingdom or India, who, by virtue of a medical diploma granted to him in the United Kingdom is registered in the United Kingdom as a qualified medical practitioner, shall not, by or under any existing Indian law or any law of a Provincial or the Federal Legislature, be excluded from practising medicine, surgery or midwifery in British India or any part thereof, or from being registered as qualified to do so.

The word "Indian" is not used in the chapter, but "British sub-

jects domiciled in India", and this undoubtedly affords scope for manipulation by company promoters and others who wish to evade the law. The expression in the Act will enable a wholly British company to be formed in the United Kingdom, with a governing body of which half the members are Indians. Presumably there will be no violation of the Act, but its object will be defeated.

Sections 111-121 of the Act, constituting the provisions discussed in this chapter, are open to very grave objections, and the application of the principle of reciprocity to these sections does not redeem them from the serious objections to which they have been rightly subjected by almost every class in India. They are based on a complete misunderstanding of the real outlook and fine traditions of the Indian people, and the sooner effective steps are taken by the Indian and the British people to replace them by appropriate Conventions between the two countries the better it will be for Indo-European relations.

CHAPTER V

FEDERAL FINANCE

THE Indian Constitution before 1919 conceived the Provincial and Central Governments as an indivisible whole in which the Secretary of State occupied the highest position and could superintend, direct and control the Central Government. The Provincial Governments had no independent existence, and derived all their powers from the Centre. A consistent application of this theory would have sterilised the activities of all Provincial Governments and rendered administrative, legislative and financial decentralisation impossible. The logic of circumstances and the imperative necessity for variation and adaptation to suit local and provincial peculiarities inevitably produced wide delegation of powers and customary abstention from interference with the working of Provincial Governments. The theory, however, continued to impede advance towards the development of self-governing institutions. Hence Legislative Councils were in theory only an enlargement of the executive Government for the purposes of law-making, and their members were styled "additional members". Legislative power was not recognised as residing in a Legislature as distinct from the Government.

The Position of Provincial Governments.—The Provincial Governments were practically agents of the Central Government and the law vested in the Secretary of State for India all-embracing powers of superintendence, direction and control over the Governments in India. By law all the revenues of India were vested in the Crown. The system was top-heavy, and would have broken down in an emergency. Provincial finances were a part of the Central finances, and the Provinces eked out a miserable and inglorious existence by receiving doles from the Central Government. The system creaked under the enormous pressure which was put upon it, and sheer necessity led to the adoption of quasi-financial settlements made between the Central and Provincial Governments. This was undoubtedly an advance upon the cumbrous system then in vogue, but it opened the door to all sorts of evils.

The old "Dole" System.—The dole system produced a demoralis-

ing effect both upon the Provinces and the Central Government. The Centre tightened its grip on Provincial expenditure and Provincial finances were rigidly subjected to its supervision and control. The results were seen in the enormous growth of a jungle of regulations called Codes of Instruction which made havoc of financial autonomy, and left no room for individuality, freedom or initiative. At every step the Provinces were confronted by some cumbrous regulation, and when the period for the fixation of settlements drew near and the Provinces started their race for the holy of holies—the Central Government secretariat—there were scenes which would require the brush of Sir Joshua Reynolds to paint. Such a state of affairs could not last long, and the machinery would have collapsed under the enormous strain put upon it. It was not in consonance with the great advance which Provincial patriotism and Provincial needs had made in the years 1910 to 1917.

The authors of the Montagu-Chelmsford Report had defined the task of the builders of the new political structure under the Act of 1919 in these terms: "We have to demolish the existing structure at least in part before we can build anew. Our business is one of devolution, or drawing a line of demarcation and cutting long-standing ties. The Government of India are to give and the Provinces must receive; for only so can the growing organism of self-government draw air into its lungs and live." This was done by statutory rules framed under sections 45 (a) and 80 (a) of the Act of 1919, whereby administrative, financial and legislative authority was devolved upon Local Governments. Administrative and legislative devolution was effected through classification of subjects, while financial devolution was effected by allocating revenues or other moneys to Local Governments for the administration of subjects classified as Provincial. The rules did not confer on the Provinces any statutory right to the amount placed at their disposal, for the only body corporate was the Secretary of State in Council (section 32 of the Act of 1919). The authors of the Report were deeply impressed by the need for financial autonomy. "Our first aim", they stated, "has been to find some means of entirely separating the resources of the Central and Provincial Governments. . . . The existing financial relations between the Central and Provincial Governments must be changed if the popular principle of government is to have fair play in the Provinces" (paragraph 200). The system

actually established fell considerably short of these ideals, and the history of financial administration of various Indian Provinces during the first few years of reform, was largely a history of the desperate attempts made by the Central and Provincial Governments to establish financial equilibrium by heroic economy and increased taxation.

Expenditure on Transferred Departments.—Expenditure on "nation-building" or "Transferred departments" was actually less at the end of 1923–24 than in the year 1921–22, and the Majority Report of the Muddiman Committee admitted that financial difficulties arising from finance had formed one of the main obstacles to the success of reforms. The constitutional position of Provinces in the financial sphere was essentially vague. By the Act of 1919 all the revenues of India were in theory available for the purposes of the Governor-General in Council, and the Government of India Act of 1919 did not recognise a division between the revenues of the Centre and the Provinces. But rules under section 45 (a) of the Act assigned certain sources of revenue to the Provinces corresponding in the main to the Provincial subjects administered by them. Theoretically, the Centre retained a final call on the revenues of the Provinces (Devolution Rules, 14-20), but in actual practice the Provinces budgeted for the disposal of revenues accruing to them under the existing arrangements, and the Central Government intervened only to the extent of requiring a Province to re-establish its finances in the event of a deficit.

The White Paper Allocations of Revenue.—The White Paper proposals of the Government were based on the recommendations of the two Peel Committees, 1931 and 1932. Revenues derived from sources in respect of which the Legislature of a Governor's Province has exclusive or concurrent power to make laws were allocated as Provincial revenues, while revenues derived from sources in respect of which the Federal Legislature has exclusive powers to make laws were allocated as Federal revenues, but the Federal Legislature was empowered to assign to Provinces and States in accordance with such schemes of distribution as might be determined the whole or any part of the net revenue derived from salt, Federal excise and export duties. The exclusive sources of Federal revenue were import duties (except on salt), railways and receipts from other Federal commercial undertakings, coinage of profits and share in profits of Reserve Bank, export duties (except the

export duty on jute), salt duties, tobacco and other excises (except those on alcoholic liquors, drugs and narcotics). The salt duties and excises were to be levied by the Federation, but a share was to be assigned to the Provinces. In the case of export duty on jute or jute products an assignment to the producing units was compulsory, amounting to not less than 50 per cent of the net revenue from the duty. The net revenues derived from succession duty (other than duty on land), taxes on mineral rights and on personal capital (other than land), terminal taxes on railway-, water- or air-borne goods and passengers, and taxes on railway tickets and goods freights and stamp duties which were the subject of legislation by the Indian Legislature at the date of federation, were to be assigned to the Provinces, but the Federal Legislature would lay down in each case the basis of distribution among the Provinces, and was empowered to impose and retain a surcharge on such taxes for Federal purposes.

White Paper Proposals regarding Income Tax.—The White Paper proposed that a prescribed proportion, not being less than 50 per cent nor more than 75 per cent of the net revenue derived from taxes on income other than agricultural incomes, except the taxes on the income of companies (and exclusive of any surcharges imposed by the Provinces, and of revenues derived from the taxes on the emoluments of Federal officers or taxes on income attributable to Chief Commissioners' Provinces and other Federal areas), should be assigned on a prescribed basis to the Governors' Provinces. This provision was to be applied to any State member of the Federation which had agreed to accept Federal legislation regarding taxes on income. For each of the first three years after the commencement of the Constitution Act the Federal Government would be entitled to retain in aid of the Federal revenues, out of the moneys which would otherwise be allotted to the Provinces (the amount distributed to the Provinces being correspondingly reduced), a sum to be prescribed, and for each of the next seven years a sum which is in any year less than that retained in the previous year by an amount equal to one-eighth of the sum originally prescribed. The Governor-General was empowered to suspend these reductions in whole or in part if, after consulting the Federal and Provincial Ministers, he was of opinion that their continuance would endanger the financial stability of the Federation. Moreover, the Federal Legislature was empowered to impose surcharges for

Federal purposes on income other than agricultural income, no part of the proceeds of which was to be assigned to the Provinces. The powers of the Federal Legislature to impose taxes on the income or capital of companies were to extend, ten years after the introduction of the Constitution Act, to the imposition of taxes on companies in any State member of the Federation. Such taxes were to be collected directly from the State by the Federal Government and not from the company.

These proposals represented nearly three years of sustained work by the Peel Committees on Federal Finance as well as the Eustace Percy Finance Committee which visited India in 1932.

The most striking change in the original proposal of the First Peel Committee on Federal Finance consisted in the fact that the Provinces were deprived of nearly half the proceeds of income tax to which they would have been entitled under the First Peel Committee. The latter had recommended that the entire net proceeds should be assigned to the Provinces. The Eustace Percy Committee had pointed out this difficulty: the stability of the Centre could not be maintained if the entire proceeds were assigned to the Provinces. The Government accordingly modified this suggestion, and they were helped in their decision by the Second Peel Committee on Federal Finance.

It will be convenient to give a brief account of Central and Provincial Budgets. The figures are based on the brilliant report of Sir Otto Niemeyer published in May 1936.

A.—BUDGET OF THE GOVERNMENT OF INDIA

(In lakhs of rupees)

	1930–31	1931–32	1934–35	1935–36 (revised)	1936–37 (Estimates as presented)
Revenue . . .	1,24,60	1,21,64	1,25,10	1,24,37	1,22,77
Expenditure . . .	1,36,18	1,33,39	1,20,15	1,21,95	1,22,70
	−11,58	−11,75	+4,95	+2,42	+7

NOTES.—All the above figures include Burma.

The 1934–35 result is given before providing 2,81 lakhs for rural economic development and other special grants totalling 1,78 lakhs out of the surplus of that year: and the 1935–36 result before providing 45 lakhs for buildings in Sind and Orissa and 1,97 lakhs for Revenue Reserve out of the anticipated surplus of that year.

Expenditure both in 1935–36 and in 1936–37 includes a grant of about 1,90 lakhs to the jute-producing Provinces and a subvention of 1,00 lakhs to the North West Frontier Province. Expenditure in 1936–37 includes in addition a grant of 1,08 lakhs for Sind and 50 lakhs for Orissa.

B.—PROVINCIAL BUDGETS

(In lakhs of rupees)

	Madras	Bombay	Bengal	United Provinces	Punjab	Bihar and Orissa	Central Provinces	Assam	North West Frontier Province
Population (in millions)	46·7	21·9	50·1	48·4	23·6	37·7	15·5	8·6	2·4
1930–31— Revenue	16,84	13,81	9,66	11,97	10,56	5,27	4,70	2,44	. .
Expenditure	17,90	15,62	11,41	12,88	10,99	6,06	5,14	2,79	. .
	−1,06	−1,81	−1,75	−91	−43	−79	−44	−35	. .
1935–36 (revised)— Revenue	15,72	14,80	11,43	11,79	10,46	5,54	4,56	2,36	1,70*
Expenditure	16,04	15,08	11,58	11,84	10,57	5,61	4,81	2,83	1,76
	−32	−28	−15	−5	−11	−7	−25	−47	−6

	Madras	Bombay	Bengal	United Provinces	Punjab	Bihar	Central Provinces	Assam	North West Frontier Province	Orissa	Sind
Population (new boundaries) (in millions)	44·0	18·0	50·1	48·4	23·6	32·4	15·3	8·6	2·4	8·3	3·9
1936–37 (Estimates as presented)— Revenue	15,90	12,04	11,49	11,71	10,80	4,70	4,81	2,37	1,70*	1,63*	3,13*
Expenditure	15,90	12,03	11,91	12,45	10,78	4,82	4,90	3,00	1,80	1,63	3,13
	. .	+1	−42	−74	+2	−12	−9	−63	−10	. .	. .

* Including subvention from Government of India.

Deficit Provinces.—Lord Eustace Percy's Committee should be given the credit for bringing the case of deficit Provinces to the notice of His Majesty's Government in a strikingly able and effective manner. The Second Peel Committee on Federal Finance substantially adopted the principles upon which these recommendations were grounded and expressly mentioned the cases of Sind, Orissa and Assam. It also recommended that half of the proceeds of the jute tax should be allocated to Bengal. The White Paper proposals embodied these recommendations, and they were approved by the Joint Select Committee. Their remarks on the principles which should govern the grant of subvention may be quoted here: "Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable contribution and thus to avoid the danger that a Province, instead of developing its resources, may be tempted to rely on expectations of extended Federal assistance; and we agree". The express recognition by the Government of its obligation to give subventions to deficit Provinces constitutes an extremely important departure from the practice hitherto followed, and assures financial stability to some of the most important units of the Federation. The danger of the scheme lay in the possibility of control, both by the Federal Legislature and the Federal Government, over deficit Provinces, and the repetition of the "dole system", which the Act of 1919 had successfully ended. Had the subvention been annual, the autonomy of the Provinces might have been seriously affected and the Federal Legislature would have constantly pressed the Government to interfere in the financial administration of such units. Annual subventions would have tended to make the Provinces helpless and deprive them of all initiative and enterprise.

Of all the deficit Provinces which have benefited by this decision Sind undoubtedly is the greatest gainer. In 1931 and the beginning of 1932 the people of Sind were reduced to great straits in suggesting the finding of ways and means to meet the deficit of 18½ lakhs a year. They would have found it impossible to devise any effective measures for this purpose. At the end of 1932, when the Report of the Federal Finance Committee was accepted by the Third Round Table Conference, they were completely relieved of their apprehen-

sion and the Federal Government is now committed to a subvention in accordance with the Brayne Committee Report. This will amount to 80½ lakhs from 1933–34 to 1938–39, after which it will be continuously reduced until 1944–45, a net surplus of gradually increasing amount being established. The principle of subvention to deficit Provinces is embodied in section 142 of the Act, which lays down that "such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces: [Provided that, except in the case of North West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made.]"

Allocation of Sources of Revenue between the Centre and Units.—The question of distribution of sources between the Centre and the units has always presented unusual difficulties in all Federations. While it is true that community of economic interests has been the most powerful factor in developing alliances, and the latter have sometimes paved the way for a complete Federation, as in the case of the German *zollverein*, it is also true that the divergence of economic interests has powerfully influenced a policy of isolation and independence. The difficulties experienced by the fathers of the Australian Constitution owing to intense jealousy of independent States with pronounced and, in some cases, hostile economic interests, show that while economics unite as well as divide communities and countries, in India, thanks to the adoption of the proposals of the Montagu-Chelmsford Report, a provincial system of finance has been gradually built up. It needed supervision and even control by the Centre now and then. The lightening and loosening of purse-strings is a heart-rending process, but the heroic efforts made by Sir Basil Blackett to remit the Meston contributions did undoubtedly relieve the Provinces of a great deal of their anxiety. Even so, deficits continued to mount up and the Provinces, except the Punjab, were unable to present a balanced budget. Provincial Finance Members began their annual wail with pitiless monotony, and in the month of March, which is

pre-eminently a budget month for India, one could hear the tale of woe recited all over India in mournful tones. The evolution of the Federal scheme in 1930 had repercussions on the financial implications of the Federation, and the First Peel Committee on Federal Finance attempted an application of the basic Federal conception to the sphere of finance. The main outlines of the financial needs of the Centre are fairly clear. The Provinces have an enormous field for the development of social services.

Paucity of Provincial Revenue.—The need for development of primary education, communications, and organisation of sanitation and medical relief has been emphasised by Indian Ministers since the Reforms. But the funds necessary for the enormous expenditure that would be involved are lacking. It is no exaggeration to state that three-fourths of the total revenues of each Province will be required for development of social services. The demands of Provinces will expand with the rise in the standard of living and the education of the Indian electorate. Yet the sources of revenue allotted to the Provinces are mostly inelastic. There was little possibility of an appreciable increase in Provincial revenues under the Montagu-Chelmsford scheme. On the other hand, the demands of the Centre are comparatively constant and inelastic and the range of Federal expenditure is more definite. The difficulty in the adjustment of financial relations between the Centre and the Provinces lies in the fact that the latter have never had the requisite funds for the fullest development of their social needs, while the Central Government has no greater margin than is requisite in view of the supreme importance of the defence services and the maintenance of stability at the Centre. As the Provinces, however, were given inelastic sources of revenue, they found it impossible to develop any social programme of expansion. The Centre, on the other hand, had sources which were capable of expansion in a period of normal progress and development. This inequitable division of sources was responsible for the severe crises through which many of the Provinces passed during the first three years of the Reforms, and partly for the grave political unrest which expressed in different forms the dissatisfaction of influential sections with the Reforms. To this was added, later on, the world depression, from which India suffered equally with other countries. It was acknowledged that there was not a single Province in India whose

available resources were sufficient to meet reasonable standards of expenditure. The Federal scheme first planned in 1930 involved not merely an overhauling of the legislative relations between the Centre and its units, but also a change in their financial relations. The one was complementary to the other. The position was by no means free from difficulties, and the First Peel Committee on Federal Finance had to take into account and arrive at a *via media* on the respective claims of the Centre and its units. The Centre could not be absolved of the necessity for maintaining financial stability and all Provinces were keenly interested in its maintenance, for if the stability of the Centre is impaired the stability of all Provinces will crash. It will also react on British investors in England, who have invested vast amounts in India. The plain fact is that if the credit of the Central Government is affected, and investors lose faith and confidence in its stability, it will give a shock to the system from which it will take a long time to recover. Nor could a war on the frontier or in other parts of the world be ignored. The Committee started from the standpoint that (1) it is undesirable to disturb the existing distribution of resources between the various Governments in India unless there are imperative reasons for the change; (2) that, at all events to begin with, the Federation and its constituent units are likely to require all their present resources (and, indeed, to need fresh resources of revenue), so that, on the whole, it is improbable that any considerable head of revenue can be surrendered initially by any of the Governments without the acquisition of alternative resources.

The Three Committees.—The First Peel Committee aimed at eliminating all charges on British Indian, or Central, subjects in order that the new Federal Government may start on an even keel. These may be classified into (1) charges on departments maintained for British India, such as zoological and archaeological surveys; (2) a share in the pre-Federation obligations in respect of civil pensions; and (3) possibly a share in the service of the pre-Federation debt. It is unnecessary to detail the stages through which the controversy passed. It is sufficient to remark here that the elaborate investigations of the Percy Committee showed that in the case of the pre-Federation debt obligations were covered by assets, and this important objection of States to the taking over of the debt of the Government of India was removed.

The Committee aimed at an equitable apportionment of burden among different units of the Federation, and framed a classification of revenues into Federal and Provincial in paragraph 10 of the Report (Federal Finance Committee, 1932) which is the basis of classification in the Act of 1935. It assigned income tax to the Provinces, but its collection by one agency at a uniform rate was to be fixed by the Federal Legislature. The scheme of classification has already been analysed above. This was the scheme of the Peel Committee, and to all who have studied the question it is clear that it marked a considerable advance over the existing arrangements. It introduced an element of elasticity and flexibility in Provincial resources. The First Peel Committee had assigned the proceeds of income tax to the Provinces, the resulting deficit being made up for the time being by contributions from the Provinces, which would gradually disappear.

In the opinion of many practical administrators the proposals of the Peel Committee for transfer of income tax to the Provinces would have jeopardised the solvency of the Federation by depriving it of adequate access to revenue from direct taxation. The mutual financial relations of the Federation and its units would also remain uncertain and perhaps discordant if the countervailing contributions from the Provinces to the Federation, originally proposed for a term of years, could not be extinguished in accordance with the programme. The Percy Committee had stated that no time-limit could be fixed for the abolition of contributions of such magnitude. The Committee had pointed out that even if there is a substantial economic recovery some Provinces would remain permanently deficit Provinces, and their share of the income tax would not be sufficient to wipe off this deficit. The aims which were kept in view in framing the financial scheme were to provide that all Provinces start with a reasonable chance of balancing their budget; to place at their disposal revenues sufficiently elastic for subsequent development; to assure the solvency of the Federation; and to ensure that, after an initial period, the Federal sources of revenue shall be derived from British India and the States alike. These were the principles which guided the two Peel Committees in framing their financial scheme. It would be an exaggeration to state that the Committees were able to realise these aims. It was impossible to do so, in face of the hard realities of Indian finance

and the enormous complications which the world depression had introduced. The Report of the First Peel Committee was modified in the light of the constructive suggestions of the Percy Committee, and a twofold division of income tax was adopted whereby Federation and Provinces were to be allotted definite proportions of the proceeds of the tax. The Second Peel Committee also incorporated the recommendations of the Davidson Committee regarding the contributions and immunities of Indian States in paragraphs 22-32; while the suggestions of the Percy Committee, marked a complete new departure. The Federal Government was to be vested with emergency powers to levy additional taxes for its purpose, as well as the power to levy contributions from Provinces. The Government based its proposals in the White Paper mainly on the Second Peel Committee.

The Government proposed that a specified percentage of the yield of income tax, varying from 50 to 75 per cent, should be assigned to the Provinces and be laid down in the Act. The Joint Select Committee objected to this specification in the Act, and proposed that a Financial Enquiry Committee should fix this percentage after investigation. Moreover, a fixed percentage of income tax was not to be assigned to the Provinces immediately, but gradually, and two periods were suggested for this process. In the first period the amount to be retained by the Centre would be larger; in the second period there would be a gradual reduction in this percentage, until at the end of the second period the final and definite percentage to be assigned to the Provinces would be permanently assigned to them.

The Inquiry by Sir Otto Niemeyer.—The proposals of the Joint Select Committee were embodied in the Act, which contained a provision for a Financial Inquiry to review the present and prospective budgetary positions of the Government of India and of the Governments of Provinces on matters which, under sections 138 (1) and (2), 140 (2), and 142 of the Government of India Act, 1935, have to be prescribed or determined by His Majesty in Council. The Committee was appointed on December 6, and submitted its Report on April 6. It was undoubtedly one of the ablest Committees that have recently been appointed, and its efficiency was due partly to the fact that it had only one member—the Chairman, Sir Otto Niemeyer. No better

choice could have been made by the Government. Had Sir Otto been appointed to make such an inquiry at the end of 1931 we would have been spared a great deal of trouble and worry during the ensuing four years. The writer can say this from experience, as he was engaged in these discussions in London in 1931, 1932 and 1933. Sir Otto Niemeyer brought to bear wide experience and deep insight into the problems of Indian finance, and though his recommendations for provincial allocations left each Provincial Administration dissatisfied, the general opinion was that his proposals were distinguished by their impartiality and equity.

There was one factor which facilitated the task of the Committee. Previous discussions of the problem had taken place "in the deep shadow of depression", and the uncertainties of the financial position were inevitable. In 1936 the position had greatly improved. Compared with deficits of over 11 crores in each of the years 1930–1931 and 1931–32, the Central Budget has produced surpluses of considerable magnitude in the year 1932–33 and every subsequent year. In the Provinces likewise a comparison of the anticipated budget out-turn in 1935–36 revealed very substantial improvement over the deficit position of 1930–31. The improvement is parallel to what has occurred in many outlying parts of the world and reflects the same underlying causes. Sir Otto came to the conclusion on a general review of existing tendencies that the budgetary prospects of India, given prudent management of finances, justified the view that adequate arrangements can be made, step by step, to meet the financial implications of the new Constitution. Sir Otto came to the conclusion that from the financial point of view, "His Majesty's Government may safely propose to Parliament that Part III of the Government of India Act, 1935, should be brought into operation a year hence". This recommendation has been adopted and an Order in Council, dated July 3, 1936, fixes April 1, 1937, as "the date of commencement" of Provincial Autonomy.

Section 142 of the Act provides that "Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be provided for different Provinces.

"Provided that, except in the case of the North West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made."

The Financial Inquiry Committee of Lord Eustace Percy deserves the credit of bringing the question of deficit Provinces to the front, and its principles were incorporated by the Second Peel Committee on Federal Finance. The Joint Select Committee approved of these suggestions, and the section quoted above embodies this principle.

Sir Otto Niemeyer was called upon to apply this principle in particular cases, and he made recommendations on the subject. A summary of the Report of the Committee, very much in Sir Otto's own words, will bring out clearly and succinctly the main recommendations.

Proposals of the Niemeyer Committee.—It is obvious, as the Percy Committee said, that special assistance to *certain* Provinces, which, whatever precise form it takes, can only be given at the cost of Central revenues, must operate to delay *pro tanto* the general transfer to *all* Provinces of their share of taxes on income. This consideration cannot be absent from the mind of anyone endeavouring to deal fairly with the whole problem, and sets one limit to the amount of prior readjustment which can reasonably be admitted.

At the same time it is equally clear that some Provinces are intrinsically better off than others and at the moment less urgently in need of additional resources; and it is both fair and inevitable that a certain measure of correction should be applied, even if it means that Provinces which have been able to attain higher standards of administration should now to some slight extent have to progress more slowly.

Certain further general comments may be made. Bombay has just received annual relief to the extent of approximately 90 lakhs from the separation of Sind; Madras and Bihar approximately 20 lakhs and 8 lakhs respectively from the separation of Orissa. Madras, Bombay and the Punjab have certainly not the lowest administrative standards in India. Bengal is clearly on a low standard,

while Bihar and Orissa has been generally recognised as the poorest Province in India. To a less extent similar considerations apply to the Central Provinces. The position of the United Provinces is in so far peculiar that while its ultimate future gives less reason for anxiety, its immediate difficulties are considerable. Sind and Orissa, as newly instituted Provinces, have special problems of their own.

Sir Otto went on to give more detailed comment on certain individual Provinces.

Sind.—For the year 1936–37 the Government of India have provided a subvention to Sind of 1,02 lakhs plus non-recurrent grants of 4 lakhs for initial equipment and election costs and 2 lakhs unallocated. In addition, the Government of India have undertaken to provide 17½ lakhs for buildings in Karachi from their anticipated surplus for 1935–36.

The deficit for the future (excluding the Lloyd Barrage, but allowing for certain reasonable additions both to revenue and expenditure) may be estimated at 1,05 lakhs—a considerably higher figure than the estimate of the Sind Conference in 1932 (approximately 80 lakhs). There are possible increases in revenue, for instance in land revenue from the Barrage lands, and the above figures exclude any ultimate receipt from the allocation of taxes on income.

The initial subvention under the Act may properly be fixed at 1,05 lakhs a year, to which should be added a single non-recurrent grant of 5 lakhs which can be used, for instance, towards the cost of a jail at Shikarpur. The more difficult question is what modification should be made in this subvention in later years.

The future of Sind and of the subvention as part of Sind finances is inseparably bound up with the financial future of the Lloyd Barrage. In considering to what extent it is justifiable to continue this charge on the Centre, it must be assumed that the Barrage scheme will be administered on lines comparable with similar schemes elsewhere and that adequate rates will be charged for the facilities it will provide.

From a survey of the prospects of the Barrage scheme just made by the Government of India, it would appear that the charging of part of the interest to capital (which is necessary during construction and the earlier years of partial working) can cease at the end of

1937–38, after which year net revenue and capital receipts should cover interest; and that by the end of 1939–40 new capital expenditure will cease. After that date it will be possible to fix the definite service (interest and amortisation) of the Barrage debt, which will of course be a future charge on the revenues of Sind. As there will be special capital receipts in the earlier and not in the later years it would be appropriate to fund this debt, not on the basis of an equated annuity over a period of years, but on the basis of suitable instalments of principal together with interest on the balance outstanding. Until the date of funding, all receipts in excess of interest should be applied to reduction of debt. If the service is spread over forty years from April 1, 1942, at 4½ per cent interest, with capital repayments of 75 lakhs a year in the first fifteen years, 60 lakhs a year in the next ten years and 50 lakhs a year thereafter, the latest estimate of net receipts from the Barrage (capital and revenue)—net in the sense of excluding one-tenth of the revenue as Land Revenue, and also deducting the equivalent of pre-Barrage net Irrigation receipts—make it probable that in the early 1940's there would be a growing margin over the required debt charges.

In all the circumstances and bearing in mind the necessarily conjectural nature of estimates for a period stretching so far into the future, Sir Otto Niemeyer recommended that the Sind subvention should remain at 1,05 lakhs for a period of ten years (*i.e.* till 1946–47 inclusive); and should then be diminished by 25 lakhs a year for twenty years, by 40 lakhs a year for the next five years, by 45 lakhs a year for the next succeeding five years, and thereafter until the whole Barrage debt is repaid by 50 lakhs a year. When the debt has been repaid (*i.e.* in about forty years from funding in 1942) any remaining portion of the subvention will, of course, in any event cease.

Under this arrangement it should be possible for proper administration to secure in every year a balance from the Barrage in favour of the general revenues of Sind over and above the debt charge and after allowing for the periodic reductions of the subvention; and it will therefore be in the direct interest of Sind to achieve results at least as favourable as those on which the estimates are made.

Orissa.—The Government of India propose to assist Orissa in

1936–37 by a grant of 50 lakhs, of which 40½ lakhs are in respect of the deficit in the revenue budget, 7½ lakhs are required for non-recurrent purposes (establishment of Famine and Road Funds and initial equipment), and 2 lakhs are unallocated to specific expenditure.

Some increase in expenditure is inevitable: it is impossible to ignore the fact that the existing standard of expenditure in Orissa is extremely low; and the scope for expansion in the Province's own resources in the early future is unusually limited.

As against the provision of 40½ lakhs in 1936–37 for recurrent Orissa expenditure, it is therefore necessary to contemplate a somewhat higher normal scale of assistance, and my conclusion is that the figure should be increased to approximately 50 lakhs.

Sir Otto recommended also, in order to ease the position in the earlier years, that the Government of India should make a further grant to the Orissa Famine Fund so as to raise the total in the latter to the figure of 10 lakhs prescribed in the Orissa Order in Council. Five lakhs have already been provided for this purpose and a contribution of 1¼ lakhs is included in the 1936–37 Orissa Budget, so that a further non-recurrent sum of about 4 lakhs would be needed.

Assam has been universally recognised as a deficit Province and must undoubtedly receive assistance. The measure of the assistance depends partly on the prospective revenue of Assam allowing for a very moderate amount of continued recovery, and partly on the degree to which the existing Provincial deficit (47 lakhs in 1935–36) can be regarded as having been unavoidable (either as regards expenditure or taxation). Allowance has further to be made for the cost of provincial autonomy, and for certain adjustments of expenditure with the Centre, including the cost of the Assam Rifles, hitherto mainly borne by the Central Government.

Taking all these considerations into account, Sir Otto recommended that Assam should be given assistance to the extent of approximately 45 lakhs a year, irrespective of the special arrangement for the Assam Rifles mentioned in the next sub-paragraph.

At present the Central Government pays 12 lakhs per annum towards the total cost of the Assam Rifles (15 lakhs). In future the

Central Government will in any case pay the cost of the Manipur Battalion (approximately 3 lakhs). The Central Government now proposes to bear 7 lakhs of the cost of the remaining Assam Force and to treat this payment separately from any assistance for Provincial needs proper. Sir Otto held this to be an equitable arrangement.

The Assam Government put forward a special claim in connection with the proceeds of the excise duty on Assam oil, though the incidence of the tax obviously does not fall on the producing Province. Sir Otto did not think there was economic justification for this particular claim or that it presented any real analogy with superficially similar claims which it might be alleged had been recognised elsewhere. In any case, having regard to the amount of the proposed assistance, which such a receipt could only operate to reduce, it was unnecessary to pursue this matter further.

The North West Frontier Province, which has since 1932 received an annual subvention of 1 crore from the Central Government is so far in a special position that section 142 of the Government of India Act permits an increase in its subvention at any time without an address from the Federal Legislature. It is, however, desirable both from the point of view of the Province and from that of the Central Government, that the subvention should be fixed for a certain period of years. After examining the past and prospective budgetary position of the Province (and also incidentally the various references made in the past to equivalence in certain respects with neighbouring districts of the Punjab), Sir Otto's recommendation is that the existing subsidy of 1 crore should be supplemented by approximately 10 lakhs per annum. In so far as this assistance may take the form of a subvention under section 142, it should be fixed for a period of five years, after which it should be subject to revision in the light of the then existing circumstances. The position should then be reviewed in the light of five years' further financial administration.

Summarising the whole provision, Sir Otto recommended that assistance of the following *approximate* annual amounts should be given to the Provinces mentioned below, as from the date on which provincial autonomy commences. This assistance should be given irrespective of the ultimate allocation of taxes on income and should not be affected by that allocation:

	Lakhs	
Bengal	75	
Bihar	25	
Central Provinces	15	
Assam	45	Apart from 7 lakhs in respect of the Assam Rifles.
North West Frontier Province	1,10	
Orissa	50	*Plus* 19 lakhs non-recurrent.
Sind	1,05	*Plus* 5 lakhs non-recurrent, and to diminish.
United Provinces	25	For 5 years.
	4,50	

Against this sum, 2,58 lakhs (North West Frontier Province 1,00 lakhs, Orissa 50 lakhs, Sind 1,08 lakhs) are already provided in the Budget of the Government of India for 1936–37. The recurrent additional cost to the Centre would therefore be 1,92 lakhs a year.

Sir Otto then dealt with the scheme of cancellation of debt formulated by the Government of India, and recommended that all debts contracted by Bengal, Bihar, Assam, North West Frontier Province and Orissa contracted under the Centre prior to April 1, 1936, should be cancelled. This would mean a net annual saving to Bengal of 33, to Bihar of 22, to Assam of 15½, to the North West Frontier Province of 12, and to Orissa of 9½ lakhs. Regarding the Central Provinces, Sir Otto recommended cancellation of all deficit debt as on March 31, 1936, and approximately two crores of pre-Reform debt, which would mean a net saving of 15 lakhs to the Province.

The claim of the jute-producing Provinces to the whole or part of the jute export duty was recognised by the Second Peel Committee on Federal Finance in 1932, and is embodied in section 140 (2) of the Act. Sir Otto recommended that the percentage should be increased to 62½. On the estimated gross yield of the duty in 1936–37 at 3,80 lakhs, this increase of 12½ per cent would mean in round figures the following additions to the resources of the Provinces concerned, at a corresponding cost to the Central Government: Bengal, 42 lakhs; Bihar, 2½ lakhs; Assam, 2¼ lakhs; Orissa, rather over ¼ lakh. The main conclusions of the Committee on subventions to deficit Provinces, contemplated in section 142, may now be summarised as follows:

Sir Otto recommended therefore that annual grants in aid under section 142 of the Act should be charged on Central Revenues as follows:

	Lakhs	
United Provinces	25	For a fixed period of 5 years.
Assam	30	Subject to the proposal as to the Rifles.
North West Frontier Province .	1,00	Subject to reconsideration at the end of five years.
Orissa	40	With 7 lakhs additional in the first year, and 3 lakhs additional in each of the next four years.
Sind	1,05	For 10 years with 5 lakhs additional in the first year, then falling until the grant ceases entirely on the extinction of the Barrage Debt in about 45 years' time.

All the proposals of Sir Otto Niemeyer, after an exchange of views between the Government of India, the Provincial Governments and the Secretary of State for India (Cmd. 5181, 1936), were accepted by H.M. Government, and approved by Parliament. They are given validity by the Government of India (Distribution of Revenues) Order, 1936.

The Income Tax Provisions.—I have traced the recommendations of Finance Committees on income tax in previous pages. These are incorporated in section 138 of the Act, which provides that—

"(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed: provided that—

(a) the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council;

(b) the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) Notwithstanding anything in the preceding subsection, the Federation may retain out of the moneys assigned by that subsection to Provinces and States—

(a) in each year of a prescribed period such sum as may be prescribed; and

(b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction:

Provided that—

(i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council:

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

(3) Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from

the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section—

"taxes on income" does not include a corporation tax;

"prescribed" means prescribed by His Majesty in Council; and "Federal emoluments" includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income tax is chargeable.

Sir Otto Niemeyer was called upon: (1) to specify the percentage of income tax to the Provinces; (2) to fix the duration of each of the two periods into which the initial and permanent assignment of income tax to Provinces was divided; and finally (3) to determine the basis of distribution of income tax among different Provinces. These were exceedingly delicate problems, and had aroused considerable discussion. The agricultural provinces demanded a different basis from that proposed by Bombay and Calcutta; Bombay representatives complained of the system whereby its high total income tax was taken away from it and thrown into a general fund. Some advocates insisted on residence as the chief criterion, while others trotted out population as the norm. The author can still recall the three years of these discussions in the first two Peel Committees on Federal Finance and on the Joint Select Committee. The task assigned to Sir Otto was by no means an easy one, but he has a broad back and assumed his responsibility with the gay nonchalance of a happy schoolboy. His recommendations are embodied in paragraphs 25 to 35, and are summarised below.

Niemeyer Committee on Income Tax.—The 1936–37 budget estimate of receipts from all forms of income tax (including corporation tax) is 15·7 crores, which for the present purpose must be reduced to about 13·6 crores on account of cost of collection and the prospective separation of Burma. Of this latter sum it may be estimated that about 1¾ crores pertain to the wholly Federal heads of corporation tax, Chief Commissioners' Provinces and Federal emoluments, leaving a residuum of about 12 crores divisible between the Centre and the units. The precise sum will, of course, fluctuate from year to year according to the yield of this head of tax, but it is at present of this order of magnitude.

There are two considerations to be balanced in arriving at the

percentage of some such total to be assigned to the Centre and the units respectively. On the one hand, there is the vital necessity of safeguarding the financial stability of the Centre. On the other hand, having regard to the obvious future needs of the Provinces and in order to maintain a reasonable adjustment of relative burdens between the various units, it is clearly very desirable that the maximum practicable distribution should be achieved.

On a balance of the various considerations and risks involved, Sir Otto recommended that the prescribed percentage of these taxes that shall not form part of the revenues of the Federation (section 138 (1)) should be 50 per cent.

The next question is what amount out of this 50 per cent and for what periods should temporarily be retained by the Federation (section 138 (2)). It is clear that in the years immediately following the introduction of provincial autonomy there can be no question of the Centre's relinquishing a further 6 crores or so of its resources.

Apart from the separation of Burma and the provision of 2 crores' assistance for the Provinces, the additional cost of new Federal institutions (probably something over half a crore) may be imminent, and provision may have to be made for financial adjustments in respect of the States under section 147 of the Act, at a net ultimate annual cost now estimated at rather more than half a crore, though the full annual charge on this latter account will presumably not fall to be met in the early years. If, however, there is bound to be delay, the Provinces will be receiving from the Centre the amounts proposed by Sir Otto, in addition to what certain of them have already been receiving from the jute export duty and about 1½ crores per annum for roads, as well as certain grants (3½ crores) for rural purposes.

Sir Otto recommended that five years should be taken as the period during which the Centre will be consolidating its position. He found it less easy to prescribe within this first period how much in fact can be surrendered. Obviously conjectures fixing specific dates in this period might, in the present state of economic flux in the world, in fact prove substantially wide of the mark: and if such a conjecture had to be made so soon in terms of such and such a year, it might perhaps more easily err on the side of caution than on the side of temerity, to the disadvantage of the Provinces. To avoid these inconveniences, it will be preferable to base the amounts

to be withheld not so much on specific but entirely conjectural dates, but on the realisation of certain concrete facts.

The power of the Central Government to surrender a share of its revenues will in fact depend largely on the extent to which its main expansive revenue head, viz. income tax, progresses, and on the extent to which the Railways move towards attaining a surplus, as contemplated by the Railway Administration at the time of the Percy Committee. It is very desirable to give both the Central Government and the Provinces an interest in securing these results and a share in their advantages if and as soon as they are achieved.

Sir Otto recommended that the initial prescribed period under section 138 (2) (a) being five years, the prescribed sum which during that period the Centre may in any year retain out of the assigned 50 per cent shall be the whole, or such sum as is necessary to bring the proceeds of the 50 per cent share accruing to the Centre together with any General Budget receipts from the Railways (on the basis at present provided by the Railway Convention) up to 13 crores, whichever is less.

Sir Otto added two comments on these recommendations:

(1) After the abolition of tax on the smaller incomes and the two successive reductions in the rates imposed in 1931, the rates of income tax and supertax in India, especially on the higher incomes, are by no means excessive. The general scheme of Indian taxation (Central and Provincial) operates to relieve the wealthier commercial classes. The assignment of taxes on income is the main method of assisting Provincial finances contemplated by the Government of India Act; and if the remaining surcharge were maintained, it would materially contribute to the early receipt by the Provinces of additional resources.

(2) The position of the Railways is frankly disquieting. It is not enough to contemplate that in five years' time the Railways may merely cease to be in deficit. Such a result would also tend to prejudice or delay the relief which the Provinces are entitled to expect. Both the early establishment of effective coordination between the various modes of transport and the thoroughgoing overhaul of Railway expenditure in itself are vital elements in the whole Provincial problem.

The Act requires that during a second prescribed period the

Centre shall relinquish to the Provinces by equal steps so much of the Provincial share as it is retaining in the last year of the first period. Under the scheme proposed in the preceding paragraphs, the amount so to be relinquished will depend on the two factors of income tax yields and Railway revenue; and if, by the favourable operation of these factors, the amount held back proves in fact to be substantially less than the whole Provincial share, it is obvious that the task of the Centre in relinquishing it will *pro tanto* be lightened. Here again a long and somewhat conjectural view of the future has to be taken. It should prove safe at five years, so that within about ten years from the commencement of provincial autonomy the Provinces may hope to be enjoying their full share in this revenue head. No one can say in present circumstances that this programme will with certainty prove feasible, and it must be regarded as subject to the important reservation that if necessary the Governor-General will have to exercise his delaying power under the second proviso to section 138, subsection (2).

There remains finally the difficult question of the manner in which any proceeds of taxes on income available under the foregoing arrangements should be distributed.

Naturally each Province advocates the basis of division (population, residence, etc.) which gives it the largest dividend. It cannot be said that any of the proposed bases have any particular scientific validity or satisfy in any appreciable degree the ideal but practically unascertainable test of capacity to pay. The mere accident of place of collection, as has frequently been pointed out in previous discussions of this subiect, is clearly an unsuitable guide. The residence of the individual, though it may be a convenient practical dividing line for purposes of avoiding double taxation between separate political units, is not in itself a very scientific criterion, particularly in a Federation, and in fact in India gives results (of necessity partly estimated) too suspiciously near those of collection to inspire much confidence. Finally, even supposing it were practicable to ascertain to what part of India particular fractions of income (and therefore the incidence of the taxation burden) properly adhere, it is still arguable that in a Federation other considerations also are involved, particularly if the benefits and incidence of other forms of common taxation are unequally divided as between the various partners.

After full consideration of the various elements of this problem, including the uncertainty of some of the statistical data on which practical calculations must necessarily depend, Sir Otto concluded that substantial justice will be done by fixing the scale of distribution partly on residence and partly on population.

Sir Otto stated that from a practical administrative standpoint it is essential to base the distribution, not on figures to be ascertained each year (so far as they may be ascertainable), but on fixed percentages.

The division between the Provinces of the amounts available in respect of the 50 per cent share of residual taxes on income would, as recommended by Sir Otto, be as follows:

	Per cent
Madras	15
Bombay	20
Bengal	20
United Provinces	15
Punjab	8
Bihar	10
Central Provinces	5
Assam	2
North West Frontier Province	1
Orissa	2
Sind	2
	100

The above allocation does not allow for the participation of the States. If at any time any State comes into Federal income tax and thus qualifies for a share in the residual tax, a minor adjustment would have to be made. But it would be desirable that such adjustment, which could no doubt be arranged in connection with the act of accession, should not involve an alteration in the above percentages but should rather operate to affect the total to which the percentages apply just as it would operate to increase the initial amount of that total.

Corporation Tax.—Section 139 deals with corporation tax. This was the subject of keen debates in the First Federal Finance Committee. It would be correct to state that the States as a whole had agreed to the corporation tax, though in the Third Round

Table Conference there was undoubtedly a modification in their attitude, and their position remained nebulous on this point till the end of 1933. Even when they agreed to the principle, they asserted their right to get the taxes assessed and collected by their own officers, and pay an equal lump sum contribution. Such an arrangement was bound to introduce complication in the assessment of the tax, and there was undoubtedly a possibility of evasion in some States. They were naturally anxious to preserve the emblems of their sovereignty, and though the Joint Select Committee characterised this attitude "as undesirable", they felt bound to accept it.

Section 139 lays down that "Corporation tax shall not be levied by the Federation in any Federated State until ten years after the establishment of the Federation". The law imposing such a tax shall provide for the payment by the ruler of any Federated State in which the tax would otherwise be leviable contributions as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied. If the ruler elects to pay such a tax, the law will not apply to his State, and the officers of the Federation shall not call for any information or return from any corporation in the State, but the latter must supply to the Auditor-General of India such information as he may require for the determination of the amount of such contribution. The ruler of a State who is dissatisfied may appeal to the Federal Court, and the latter may reduce the amount. No appeal is to lie from the decision of the Court on the appeal.

Defects of Machinery.—These arrangements are cumbersome and complicated and are likely to provide recurring causes of friction between the Federal authorities and the Federated States. It was contended on behalf of the States that the corporation tax ought not to be levied in their States, as they already contributed more than their due share to the Federal fisc. They pointed out that some of the Federal expenditure will be for British purposes only, such as subsidies to deficit Provinces. Again, the service of part of the pre-Federation debt should fall on British India alone. Moreover, part of the proceeds of taxes on income is derived from subjects of Indian States, *e.g.* holders of Indian Government securities and shareholders in British Indian companies. Finally, the champions of States contend that the Indian States make a contribution to de-

fence of which there is no counterpart in British India. It is unnecessary to go into the details of this controversy, as all the arguments advanced by the protagonists of both parties have been repeated *ad nauseam* since the Butler Committee published its Report. It is sufficient to state here that since the First Peel Committee published its Report the proposals for the levy of corporation tax underwent radical modifications and section 139 represents a compromise that is hardly likely to contribute to harmonious relations between the Federation and the States.

Prior sanction of the Governor-General is required to Bills affecting taxation in which the Provinces are interested. Duties in respect of succession to properties other than agricultural land; such stamp duty as is mentioned in the Federal Legislative List; terminal taxes on goods and passengers carried by railway or air and taxes on railway fares and freights, shall be levied and collected by the Federation. But the net proceeds in any financial year, except in so far as those proceeds are attributable to the Chief Commissioners' Provinces, shall be assigned to the Provinces and to the Federated States within which that duty is leviable in that year, and shall be distributed among them on principles to be formulated by the Federal Legislature (section 137). The net proceeds means "the proceeds reduced by the cost of collection", and the net proceeds of any tax or duty attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificate shall be final. The proposal of the Second Peel Committee for the imposition by the Provinces of a surcharge on income tax was accepted by the Government in the White Paper, but the Joint Select Committee rejected it and the Act thus deprives Provinces such as Bombay and Bengal of an important source of revenue.

Review of Financial Structure of New Constitution.—We may now review the scheme of Federal finance from the provisions discussed above. The framework prepared by the two Federal Finance Committees of 1930–31 survived the searching scrutiny and investigation of the White Paper, the Joint Select Committee and Parliament. It is true that the scheme of allocation of revenue framed by the First Peel Committee underwent substantial changes so far as income tax is concerned. The Niemeyer Committee has not been able to recommend the assignment of more than

50 per cent of the proceeds of income tax to the Provinces, and the Provinces have thus been deprived of an elastic source of revenue. Details of Provincial and Federal sources of taxation are to be found in the Legislative Lists.

The resources placed at the disposal of the Provinces under the new scheme are undoubtedly more elastic than those provided by the Montagu-Chelmsford Reforms, and it is probable that the excise duties proposed in the new Act might bring in a large amount to the Exchequer. On the other hand, it is essential that we should travel from the region of beatific vision and hackneyed platitudes to the path of stark realities and face the prospect with a cool and dispassionate judgment. Of the Provincial sources of revenue, land revenue, which is responsible for nearly half the aggregate income of British Provinces, is permanently fixed in some Provinces. It is not only difficult but also positively dangerous to try to increase the yield from this source. Owing to world-wide depression there has been a substantial reduction in the yield from land revenue. Succession duties and taxes on agricultural income are not likely to increase in many Provinces. Very few Legislatures would be prepared to levy a tax which would be violently opposed by the most influential elements in the land. Excise is the largest source of income, and while it is true that some of the new excises may yield a slightly larger amount, the probability is that the campaign against alcohol will be prosecuted with greater vigour in the future. Excise giving in 1929–30 a revenue of nearly 19½ crores was reduced to 14,85 crores in 1933–34, owing largely to the movement for prohibition. Stamp duties may yield a small amount, if Provincial Legislatures muster up sufficient courage to impose them. Some will do it; others will not.

Rigidity of the Scheme.—It has to be admitted that even under the scheme embodied in the Act the revenues of the Provinces will be comparatively inelastic and there is little possibility of striking improvement in the near future. Very few will deny the third point: it is sufficient to note that the States will contribute only a part of the proceeds of the corporation tax to the Federal fisc, which is not likely to exceed 1⅓ million sterling. This forms an exceedingly small proportion of the enormous burden which the British Indian taxpayer will be called upon to bear. Against the small amount which the States will pay must be set nearly a crore

of rupees a year for several years which many Indian States will receive in view of their immunities and ceded territories. Even if we accept the glowing description of the Davidson Indian States' Inquiry Committee that "by the fact of their entry into Federation, the States make a contribution which is not to be weighed in golden scales", it ought not to preclude us from formulating a principle which has been regarded as axiomatic in all Federations—viz. that Federal sources of revenue shall be derived from British India and Indian States alike. The Provinces have by no means secured complete fiscal autonomy under the scheme. While it must be conceded that the delimitation of legislative power between the units and the Federation has undoubtedly increased the range and depth of provincial autonomy, it can hardly be denied that the Provinces are still subject to the interference of the Centre to a great extent. Complete fiscal autonomy has not yet been achieved, and there is the probability of organised parties launching attacks on the new scheme and destroying the framework. The Act includes a few useful provisions which may be noted here.

Subsection (1) of section 150 lays down that "no burden shall be imposed on the revenues of the Federation or the Provinces, except for the purposes of India or some part of India." Subsection (2) provides that, "subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is one with respect to which neither the Federal nor the Provincial Legislature, as the case may be, is competent to make laws". Section 152 provides for the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India by the Governor-General in his discretion, and the latter shall determine their terms of office, salaries and allowances, the supersession of the Central Board of the Bank and its liquidation. The Governor-General shall exercise his individual judgment in nominating directors of the Reserve Bank of India, and in removing from office any director nominated by him. No Bill or amendment which affects the coinage or currency of the Federation or the constitution and functions of the Reserve Bank of India shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion (section 153). Property vested in His Majesty for the purposes of the Federal Government shall, save in so far as any

Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State (section 154). If any such property was liable to any tax before the establishment of Federation, such property shall continue to be liable so long as the tax continues. The Government of a Province and the ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India. This section does not exempt a ruler from Federal taxation in respect of any lands, buildings or income being his personal property or personal income, nor does it exempt a trade or business of any kind carried on by, or on behalf of, the Government of a Province or by a ruler in any part of British India from Federal taxation in respect of that trade or business (section 155).

The Federation and the Provinces should secure that the Secretary of State and the High Commissioner for India are supplied with sufficient funds to enable them to meet all liabilities that may have been incurred in their behalf in respect to the Federation and the Provinces. His Majesty in Council may make provision for the regulation of the monetary systems of India and Burma, relief in respect of tax on income taxable both in India and Burma, and customs duties in respect of India–Burma trade (sections 157-8).

Borrowing and Audit.—The question of borrowing powers for the Provinces loomed large in discussions in the Federal Finance Committees, and Provincial representatives narrated a tale of woe, in which they detailed the invidious restrictions which had been placed on their right. Complete freedom was demanded for the Provinces, and the policy of the open market was advocated. It was clear that unlimited freedom would have led to severe competition among different units, but it was no less evident that greater elasticity and larger freedom were necessary. The Act concedes this to a certain extent.

The question of loans by the Provinces was thrashed out by the First Peel Committee, and the arguments of 250 autonomists, no less than the solid and substantial reasons adduced by the centralists, aroused considerable interest. The subject may seem abstruse and highly technical, but the autonomists urged that the experience of invidious restrictions which had been imposed on the

power of the Provinces to float loans in the markets of the world had convinced them of the need for a radical change of policy. The right to raise loans is the essence of fiscal autonomy, and the Centre may completely upset the financial programme of a Province by laying down irritating conditions on the units. If a Province borrows imprudently its improvidence will be automatically checked, as it will find difficulty in raising any more loans in the market. Even if it succeeds in doing so it will be at prohibitive rates of interest, and a repetition of its extravagance and folly will so completely disorganise its finances as to render it discreditable throughout India. It is unnecessary to go into these details now, as the principles were accepted by the First Peel Committee, who stated in paragraph 22 that "in view of the degree of autonomy with which, we understand, it is likely that Provinces will be clothed, it seems to us that it will probably be inappropriate, at all events as regards internal borrowing, that there should be any power in the Federal Government to exercise complete control over borrowing by a Province. There must, apparently, be a constitutional right in a Province to raise loans in India upon the security of its other revenues, leaving it, if need be, to learn by experience that a Province with unsatisfactory finances will be liable to borrow, if at all, at extreme rates. We would, however, give the Federal Government a suitably restricted power of control over the time at which Provinces should issue their loans so as to prevent any interference with other issues whether Federal or Provincial."

Modification of Power of Secretary of State.—The Act abolishes the power of the Secretary of State to borrow on the security of the revenues of India, though before the inauguration of the Federation he will continue to borrow in accordance with the transitional provisions of the Act. Section 315 gives the Secretary of State for India power to contract sterling loans on behalf of the Governor-General in Council during the operation of transitional provisions till the establishment of Federation. After this date the executive authority of the Federation will extend to borrowing upon the security of the revenues of the Federation with such limits as may be determined by Federal laws, while the executive authority of a Province will extend to borrowing upon the security of the revenues of the Federation within the limits imposed by the Province. This right will not be exercised by the Federal or Provincial

Governments during the continuance of the transitional provisions till the establishment of the Federal Government.

The Federation may make loans to Provinces, and give guarantees in respect of loans raised by Provinces, subject to such conditions as it may think fit to impose. The possibility of competition between the units and the Federation is avoided by subsection (3) of section 163, which lays down that a Province may not borrow outside India without the consent of the Federation, nor raise loans without the like consent, if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given. Such consent should not be unreasonably withheld, nor shall the Federation refuse to make a loan to or give a guarantee in respect of a loan raised by a Province. The Federation may also give loans to any Federated State. These provisions are eminently sensible and protect the interest both of the Provinces and the Federation.

Provincial Balances: Government of India's Policy.—The proposals of the Government of India on Provincial balances are held in the Niemeyer Report to deal with the problem in a sound manner. Sir Otto states:

On the institution of provincial autonomy, the Government of India contemplate the following steps with regard to—

(a) decentralisation of balances,

(b) consolidation of pre-autonomy debt.

(a) *Balances.*—1. The accounts of Provinces with the Reserve Bank will be credited with their unearmarked Provincial balances, Famine funds, Depreciation funds, etc., and the unspent amounts of Road and Development resources assigned to Provinces in the past in advance of requirements.

2. There are various other deposits banked with the Government of India (such as interest-carrying provident fund deposits and interest-free balances of municipal and other local authorities) which are of an intrinsically local nature or definitely associated with Provincial functions. These, together with any liabilities attached to them, will also pass to the Provinces concerned. So far as the Provinces will require cash in their treasuries and minimum balances with the Reserve Bank, they will take these from this source (as, in effect, they have hitherto done). Cash in treasuries to the extent required will become the property of Provinces, while the

accounts of the Provinces with the Reserve Bank will start with the necessary minimum credits. But in so far as there is a remanet beyond the amounts so required in cash, it is proposed to write off that remanet against debt owed by the Provinces to the Government of India. The Government of India might, in the last resort, contemplate making over the remanet also to Provinces in the form of cash, but, inasmuch as the debts of the Provinces to the Government of India carry interest above present market rates, it is clearly advantageous to them to cancel a corresponding amount of such debt. These balances are likely to grow rather than to diminish. In effect, therefore, they are a permanent asset. Accordingly, if they are used to cancel debt, permanent debt is the most appropriate to choose for the purpose. For this reason, and also because it carries a rate of interest (about 3½ per cent) which, though well above, most nearly approximates to present market rates, it is proposed to adjust these balances by the cancellation at par of pre-1921 debt. Even taking into account the liability for the payment of interest on provident fund deposits (assumed at 4½ per cent for 1937–38—a rate which is likely thereafter to fall), each Province will reap a budgetary benefit by this process.

(b) *Consolidation.*—3. Owing partly to changes in the constitution of the Government of India's own debt, from which the capital of the Provincial Loans Fund is derived, the existing arrangements for borrowing from the Provincial Loans Fund have resulted in an unsatisfactory relationship between the periods for which that Fund has lent to the Provinces and those in which the Fund's capital is repayable to the market. In order to correct this anomaly it is proposed to revise the means by which Provincial borrowing requirements should be met for the future; and in this connection it is very desirable to simplify the present relations of the Provinces to the Fund by consolidating the pre-autonomy debt of each Province into a single debt carrying a single rate of interest. This step is also advisable in the interests of future Provincial credit, to which end also it should include provision for the redemption of the remaining pre-1921 debts, which at present are not amortised.

4. If the period of repayment of such a single consolidated debt were fixed at 45 years, the above objects could be accomplished without imposing any additional burden on the budgets of the

Provinces and indeed with some relief to each. The Government of India would have preferred to consolidate on the basis of a shorter period, but 45 years is at any rate more in accord with the Government of India's own obligations to the market than the existing periods of repayment of many of the Provinces' present obligations to the Fund; and they would be prepared to accept that period. Certain exceptions would be necessary to comply in all cases with the desire to avoid increased burdens on the Provinces. Owing to the disproportionately large amount of pre-1921 debt of the Punjab, the general plan would not be entirely satisfactory in that case, and it is proposed to exclude from consolidation Rs. 10 crores of the Punjab pre-1921 debt, the Punjab Government retaining that debt at 3½ per cent on its present basis with the option to redeem it if at any time they desire to take advantage of market conditions to do so. In the case of Bombay, it is proposed to exclude a block of comparatively short-term debt of the Presidency Corporations and to continue this block entirely on the present terms.

5. The average rate of interest payable on the debt to be consolidated has been calculated, to the nearest quarter per cent, to give credit in advance for the near conversion operations of the Government of India. According to the existing terms of the Provincial Loans Fund, Provinces could thereafter expect no substantial benefit from conversion operations until the Government of India 1945–55 and 1960–70 loans are redeemed. In order that the Provinces may share any advantage arising on those occasions, it is proposed to give them the right [subject to any restrictions which may be imposed under section 163 (a) of the Government of India Act], within a year on each side of the first optional dates of repayment of these loans, to redeem in cash at par a part or possibly the whole of the amounts outstanding on those dates of their pre-autonomy debts due to the Government of India (any balance to be repaid over the remainder of the 45-year period).

6. In addition, the Government of India will be prepared to provide free of charge any ways and means advances required by any Province during the year 1937–38 on the understanding that these are completely liquidated by March 31, 1938.

7. The detailed effect of the above proposals is set out in the accompanying table:

	Madras	Bombay	Sind	U.P.	Punjab	C.P.
I.—(1) Pre-1921 debt .	827·8	615·6	274·9	1219·4	1086·7(*c*)	151·9
Deduct (2) Balance available on decentralisation . . .	577·2	361·1	49·4	322·6	294·2	151·9
Add (3) Post-1921 debt	727·5	2070·8	229·7	1760·3	998·9	378·6
(4) Debt to be consolidated . . .	978·1	2325·3	455·2	2647·1	1791·4	378·6
II.—(5) Proposed rate of interest on consolidation . .	4·5	4·5	4·00	4·25	4·00	4·25
III.—(6) Debt charges as in 1936–37 revenue budget (*d*) . .	90·5(*b*)	139·0	24·0	146·6(*a*)	96·9	27·1
(7) Annual total debt charges on existing debt (*d*) . . .	90·5	149·3	24·0	157·4	96·9	45·6
(8) Annual debt charges under consolidation .	51·2	121·5	22·1	133·5	86·5	19·0
(9) Gross benefits against budget 1936–37 . .	39·3	17·5	1·9	13·1	10·4	8·1
(10) Gross benefit against total debt charges . . .	39·3	27·8*	1·9	23·9	10·4	26·6
(11) Liability of Province in respect of that portion of (2) which carries interest assumed at 4½ per cent	13·1	13·3	1·2	11·2	8·7	5·7
(12) Net benefit as against 1936–37 budget (*d*) . . .	26·2	4·2	·7	1·9	1·7	2·4
(13) Net benefit as against total debt charges (*d*) . .	26·2	14·5*	·7	12·7	1·7	20·9

(*a*) U.P. debt charges on 1936–37 borrowing excluded and also 6·82 special repayment of 1935–36 borrowings.

(*b*) Madras debt charges on 1936–37 borrowing excluded.

(*c*) After cancelling one crore against debt due by Government of India and isolating further 10 crores at 3½ per cent excluded from consolidation.

(*d*) The difference between items (6) and (7) or items (12) and (13) in some provinces is due to amortisation charges being met from resources which have not entered the revenue accounts, *e.g.* capital receipts into the Provincial Loans Account or other balances.

* These figures may possibly be regarded as 4·9 too high.

Federal Auditor-General.—The Act makes provision for the appointment of an Auditor-General for India. He shall be appointed by His Majesty, and shall only be removed from office in like manner and on like grounds as a Judge of the Federal Court. His duties and powers will be prescribed by an order of His Majesty in Council, or by any subsequent Act of the Federal Legislature

varying or extending such an order. If a Provincial Legislature passes an Act two years after the introduction of provincial autonomy charging the salary of an Auditor-General for that Province on the revenues of that Province, an Auditor-General for that Province may be appointed by the Crown three years after the passing of such an Act. The Auditor-General of the Federation will be empowered to give, with the approval of the Governor-General, directions regarding the methods or principles in accordance with which any accounts of Provinces ought to be kept. Provision is also made for an auditor of Indian Home Accounts.

It is hardly likely that a Province will embark on the costly luxury of a Provincial Auditor-General. The United Provinces Government framed a most interesting scheme of separation of Accounts from Audit, but it proved exceedingly costly, and the scheme was dropped.

Property, Contracts, Liabilities and Suits.—Sections 172-75 dealing with these matters call for no remarks. On the introduction of provincial autonomy, all lands and buildings which are situated in a Province would vest in the Crown for the purposes of the Government of that Province, unless they were used under an agreement for the purposes of Federal Government or of the Viceroy in his dealings with Indian States. Lands and buildings which are situate elsewhere than in India would belong to the Federation. In the case of lands and buildings which are situate in a Province but do not, by virtue of the preceding provision, vest in the Crown for the purposes of the Government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in the Province, vest in the Crown for the purposes of the Federal Government or for the purposes of the exercise of the functions of the Crown in its relations with Indian States.

Section 176 carries out the recommendations of the Federal Structure Committee, and clothes the Federation and Provincial Government with juristic personality. It lays down that the Federation may sue or be sued by the name of the Federation of India, and the Provincial Government may sue or be sued by the name of the Province. Contracts made by the Secretary of State for India for the Government of a Province have effect as if they had been made on behalf of that Province; in any other case, they will have effect as if they have been made on behalf of the Federation.

The Davidson Indian States Inquiry Committee: Its importance.—Sections 145-49 are based mainly on the Indian States Inquiry Committee (Financial) presided over by Sir J. C. Davidson and worked on principles adumbrated in paragraphs 17-20 and 26 of the First Peel Committee on Federal Finance. An ideal system of Federal finance would be one under which all Federal units would contribute on a uniform basis to the Federal fisc. But the conditions in Indian States greatly militated against the application of this theory. The Butler Committee had classified Indian States into 235 States and 327 Estates, Jagirs and others. The States did not object to the principle enunciated here, but they pointed, with justification, to a number of privileges and immunities which they had enjoyed under treaties and engagements with the Crown. It was impossible to expect any Federation, nay, even a Confederation, to function successfully if every State entered the Federation with privileges and immunities which cut right across the most rudimentary and elementary conceptions of Federalism. A Federation composed of such elements would have resembled the Holy Roman Empire after the Thirty Years' War. It would have produced disorganisation and confusion, and been the laughing-stock of practical administrators and a fit object of curiosity and research by metaphysical pedants. This does not, of course, mean that every State must exhibit uniformity in its structure before it can be deemed capable of entering the Federation. No delegate ever proposed this. All that was intended was to determine the principles upon which the ideal of Federal finance could be adapted to the peculiar conditions which prevail in Indian States.

There were two factors which modified this principle. In the first place (1), there were definite and ascertained rights which States had enjoyed by treaty engagements. In the second place (2), the Central Government was entitled to, and actually received, cash contributions from many Indian States. These factors were bound to modify the pure theory of Federalism. Regarding (1) the Committee was called upon to examine the varying measures of privilege or immunities enjoyed by certain States in respect of external customs and salt; while under (2) they were to investigate cash contributions and the value of ceded territories. Again, the Committee was called upon to advise whether cash contributions should be immediately reduced or eventually extinguished, while in the case

of ceded territories it was to express an opinion as to what compensation it would be worth while for the Federal Government to offer in return for the relinquishment of the special privileges which each State enjoys or such modification thereof as might appear to the Committee to be an essential preliminary to the Federation.

Types of States Contributions.—The task was one of extraordinary complexity, but the members of the Committee were able to visit most of the important States of Southern, Central and Northern India. The Committee classified each contribution and gave a brief history of various types of contributions. These may be divided into two categories: the first comprising all tributes imposed or negotiated directly by British authority; the second, those transferred by or inherited from previous suzerain powers or overlords. The first category comprises: (1) contributions in acknowledgment of suzerainty, generally imposed by treaty embodying obligation to aid or protect on the one side and to give subordinate cooperation on the other; (2) contributions in commutation of an obligation for the provision of a State "contingent force", or other form of military assistance; (3) contributions for the maintenance of a British "subsidiary force"; (4) contributions fixed on the creation or restoration of a State or on re-grant or increase of territory; (5) contributions for special or local purposes, such as the maintenance of local courts of police, etc. The second category comprises: (1) contributions acquired by the conquest or lapse of the original recipient States; (2) contributions acquired by treaty. These classes are not mutually exclusive and many of the tributes cannot be ascribed to one origin or purpose only. A few concrete cases of "cash contributions" paid by Indian States will illustrate the principles which underlie the recommendations of the Committee and relevant sections 145-49 of the Act. Without them the Act would be unintelligible. Class (1) comprises the most typical form of tribute. The treaties of 1818 with the Rajputana States of Jaipur and Udaipur are a good illustration of this class. By these treaties the British Government guaranteed protection to these States and the latter acknowledged the supremacy of the British Government and agreed to act in subordinate cooperation with, and to pay tribute to, the Government. Another example is that of Mysore. After the defeat and death of Tippu Sultan the original dynasty was restored in Mysore, and a subsidiary force was established for the defence

and security of the Maharaja's dominions. The Maharaja agreed to pay to the East India Company a subsidy of the value of Rs. 24½ lakhs a year. The State of Bhopal furnishes a good example of class (2). The State was guaranteed protection by the Treaty of 1818 and undertook to provide a contingent of 600 horse and 400 foot. This liability was commuted in 1849 for an annual payment of Rs. 1,61,290. This is the present cash contribution of the State. Indore (whose contribution was capitalised in 1865), Jaora and Dewas, senior and junior branches also supply examples of the same class. Class (3) is represented by Travancore, Cochin and Gwalior. In the case of Gwalior the payment is made not from the resources of the territories ruled over by Scindia, but by an assignment of tribute due to this ruler from States in various parts of Central India and dating from the days of Maharatta supremacy. Class (4) is represented by the case of Cooch Behar, whose raja agreed in 1774, as the price of delivery from Bhutan, to pay half the annual revenue of his State for ever to the British Government. This obligation was commuted for a fixed annual premium of Rs. 67,700, the amount of the present contribution, in 1780. Benares affords another instance. On its creation or rather re-establishment in 1911, the State undertook to pay a cash contribution calculated on the basis of the loss of revenue involved in making over the sovereignty of the territory to the Maharaja. The tributes of the Simla Hills State date from 1815, when the States were rescued from the Gurkhas and re-established at the end of the Gurkha War. In ten out of fourteen cases the tributes are fixed as commutation for the supply of *begar*, that is, carriers to be provided by the State for military and other transport. The variations in the amount paid by the small hill States in Simla will be clear from the following list: Baghal, Rs. 3,600; Balsan, Rs. 1,080; Bhajji, Rs. 1,440; Bija, Rs. 24; Dhami, Rs. 720; Kuthar, Rs. 1,000; Kunihar, Rs. 180; Malog, Rs. 1,440; Mangal, Rs. 72; Taroch, Rs. 288. Other examples of this class are furnished by Ajaigarh, Panna and Charkhari. States having their origin in jagir grants, which developed into territorial sovereignty, are represented by Satara Jagirdars, while the Southern Maharatta States offer a very close parallel to strictly feudal State relationship. Most of these States originated in grants of land made by the Peshwa to the founder of the Patwardhan family. Class (5) is represented by the Malwa Bhil Corps, the Mina

Corps and the Kholapur Infantry. Payment is made for the maintenance of these Corps by various States, such as Kotah, Jodhpur, Kholapur, etc. Class (6) comprises the largest class, and the group numbers 31 States, paying tributes which range from Rs. 50,312 paid by Nawanagar to Rs. 153 paid by Bhavnagar under this head. Class (7) comprises 37 tribute-paying States situated in Bihar, Orissa and the Central Provinces.

The First Peel Committee on Federal Finance stated in paragraph 18: "We think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal constitution, and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely recommend that they should be wiped out *pari passu* with provincial contributions." They also recommended that any contribution which is in excess of 5 per cent of the total revenues of a State should be remitted at once. The tributes are undoubtedly arbitrary and unequal in incidence, and perpetuate a tradition of subordination among units of a Federation which is inconsistent with the principle of complete equality of the individual members. The Indian States have a perfect right to urge that no unit on entry into Federation should be burdened by these inequalities. But if this is admitted it is no less clear that all inter-state tributes also should disappear.

Recommendations of the Davidson Committee.—The Davidson Committee recommended the remission of all contributions falling under classes (1) to (3) and class (5), and that paragraph 13 of the Peel Committee Report should be implemented and any contribution which is in excess of 5 per cent of the total revenues of the States which pay it should be remitted. Immediate relief recommended under the 5 per cent principles would amount to Rs. 12 lakhs. After this has been carried out there would remain tributes amounting to not less than Rs. 63 lakhs a year ranking for eventual remission. If local corps are disbanded, the net cost to the Government will be reduced from Rs. 63 lakhs to Rs. 53 lakhs a year.

Ceded Territories.—The Davidson Committee were also asked to report in regard to territories ceded by certain States to the British Government "in return for specific military guarantees". The word "cession" implied a formal transfer, and does not include a voluntary surrender of sovereignty on the part of a durbar. Hence neither

annexation nor confiscation can be described as "cession". Again, a clear distinction must be drawn between a cession of sovereignty and a cession of jurisdiction such as is found in the case of railways, cantonments, etc. In the case of the latter, the jurisdiction has been ceded to the British Government all over the land for the track itself and for all railway purposes. The following formula has been used in the process of surrender: "I, ..., hereby cede to the British Government full and exclusive power and jurisdiction of every kind over the lands in the State which are, or may hereafter be, occupied by the Railway (including all lands occupied for stations, for outbuildings, and for other railway purposes), and over all persons and things whatsoever within the said land".

Retrocession of "Jurisdiction" to Indian States.—Many States seriously put forward claims for the retrocession of their "sovereignty" over such land in the establishment of the Federation or a compensation in lieu of retrocession. As the Davidson Committee point out, if this claim were established and every State exercised jurisdiction on the main line between Delhi and Bombay, a train would encounter no less than thirty-eight changes of jurisdiction during the course of its journey. The analogy between tributes and ceded territory is exceedingly close, as both have historically a common origin, and it was purely a matter of chance whether a State paid the tribute or ceded some territory. *Ab initio*, a State in alliance with the East India Company was called upon to supply troops for mutual defence in time of war; but, due to inefficiency of local levies, the latter was replaced by a force raised and officered by the Company at the expense of allied troops. Finally it was agreed that instead of tributes the States should cede a territory estimated to bring in a net revenue equivalent to the tribute. Hence, if tributes are to be abolished, a State which has ceded territory is equally entitled to some form of relief. The States intimated that they were not keen on financial adjustments for ceded territories, and would be only too glad if all their ceded territories were given back to them by the paramount Power. They asserted that a financial equivalent for the ceded territories would merely be an unwelcome substitute for retrocession.

Ceded Territories.—It is, however, exceedingly difficult to value a ceded territory. The last chapter (XXI) of the Report of the Special Committee appointed in 1931 to investigate this question,

brings out the enormous complexity of the task clearly enough. To begin with, it is most difficult to identify such territory. The standards of administration in each Province show great variations, Bombay occupying the highest and Bihar reaching the bottom of the scale. Again, the cost of the administration has risen enormously, and such items as education, medical relief and public work organised and financed by modern Governments were unknown at the time the territories were ceded. The conception of finance has profoundly changed in India since these cessions. Again, military ideas and methods have been almost revolutionised. Moreover, at the time of the cession, land tax was almost the only source of revenue. Since then, not only has land tax shown an alarming shrinkage, but gross receipts from other sources have greatly increased. As the Special Committee pointed out: "Ceded territories have never been administered during the last few decades with the object of producing a surplus for the defence of the States ceding them". One of the causes which led to the abolition of the Hyderabad Contingent which was paid out of the Berar surplus was the continually increasing cost of administration. In some cases only a small district was ceded, and the paramount Power was called upon to defend a territory several times as large. Such transactions are to be viewed in the light not of financial, but political, considerations. It is only in the case of Berar, which is one of the richest tracts in India, that a substantial surplus was available. The Special Committee account for it by the fact that the "rent" or lease money is paid by the Central Government while the Central Provinces get the surplus.

Cession of Berar by the Nizam.—The principal sources of revenue in Berar after the assignment of Berar to the British Government were: land revenue, Rs. 19,15,000; Frontier and transit dues, Rs. 1,95,300; Abkari, Rs. 95,000; Sayer, on lower duties, Rs. 71,000; salt wells and miscellaneous, Rs. 41,000. Since that time the revenue has increased substantially and the average revenue of 1926–27 to 1929–30 was calculated by the Special Committee at Rs. 63·31 lakhs for Central revenue, including indirect sources, and Rs. 181·88 lakhs for Provincial sources of revenue. The surplus is divided by the Special Committee into (1) Central surplus, Rs. 23,48,200, and (2) Provincial surplus, Rs. 44,34,100. These figures, it was stated, had not been tested by the Government of His Exalted Highness the Nizam.

The basis of valuation which the Davidson Committee adopted was the net value at the date of cession. As the question of Berar was outside the terms of reference of this Committee, it confined the investigation to territories ceded by the Nizam of Hyderabad in the Central Provinces and Madras Presidency. They came to the conclusion that there is no such surplus under Provincial revenue as can be made the basis of any financial adjustment. In such territories, Provincial revenues and expenditure balance approximately over a period of years. His Exalted Highness' Government also put forward a claim "to a free corridor to the sea at Musulipatam and a permit to develop a port, and a right to import free of British Indian Customs through any port, or overland from beyond British India, all articles which are the gross produce or manufacture of any part of His Majesty's Dominions, together with a corresponding right to export free of duty all articles of Hyderabad origin". These claims were based on articles I and III of the Hyderabad Commercial Treaty of 1802.

Nizam's Claim to Masulipatam waived.—With regard to the first claim the Committee remarked that Masulipatam is sixty miles from the borders of Hyderabad. As regards the second claim, the Government of India in 1873 had given an interpretation adverse to that put forward by the Nizam's Government. It seems that ultimately Hyderabad decided that it will not "necessarily insist on exercising the rights in question". The Committee recommended that the annual credits be allowed in respect of territory ceded by the following: Baroda, 22·98 lakhs; Gwalior, 11·78 lakhs; Indore 1·11 lakhs; Sangli, 1·15 lakhs.

Salt.—The normal demand of India for salt is approximately 1,900,000 tons per annum, or an average of 12 lb. per head of the population. Salt comes in mainly from England, Europe, North Africa and Aden, and a small quantity is shipped from Bombay, Karachi and Madras, while salt factories in Kathiawar have also competed in the Calcutta market. Many Indian States possessed their own salt-works and the surplus was dumped upon the British Indian market. Apart from Kathiawar and Cutch, where arrangements were made between 1883 and 1885, agreements of a commercial character embodying provision for compensation in respect of surrendered rights was entered into with about fifty States which owned, operated, or had an interest in salt-works, or were in a

position to levy transit duties on an important scale. The Committee stated that it would be impossible to place a present-day valuation on salt rights which were extinguished or in salt-works which were entirely destroyed more than fifty years ago. Moreover, the States had signed the agreements of their own accord, and with their eyes open. They cannot now go back on their original agreements. In regard to Kathiawar and Cutch, the Committee suggested that all existing restrictions on the manufacture and marketing of salt should be removed, subject to the condition that the States concerned should permit collection of the Federal Salt Duty by Federal officers at the source of manufacture, together with the application of such administrative regulations as are common to the maintenance of salt-works and the movement of salt throughout India.

Sea Customs and Ports.—The attitude of maritime States on this question is expressed in paragraph 17 of vol. ii. of the Simon Commission Report. The States argued that they possessed, by virtue of their sovereignty the right of levying and retaining sea customs at their own ports, and the existing scale of duties had been determined without reference to the interests of Indian States. They contended that the revenue they derived from this source is elastic and is an important part of the local revenues. In reply it was argued that uniformity of customs duties is the essence of Federalism, for, unless this is done, varying customs rates may be levied along the enormous length of the Indian coast-line, and the whole trade of India will be thrown into confusion. The magnitude of this issue will be realised from the fact that of the total overseas trade of India, which is estimated on the average at Rs. 500 crores, the customs duty brings in Rs. 60 crores a year. It is impossible to concede the claims advanced by the maritime States for Customs, etc., without exposing the Indian revenues to imminent risks. The difficulty of estimating at the present time the value of the existing rights of maritime States is enormous. Hence the Committee recommended that negotiations should be started for the purchase of the rights of Travancore and Cochin in Cochin port. The Committee suggested a compromise whereby States would be enabled to retain the duties on goods imported through their own ports for consumption by their own subjects. This should be done only with the consent of States, as it may affect their Treaty rights.

Rights enjoyed by States.—It is unnecessary to deal at length with other rights enjoyed by certain States. In some cases, States retain their own postal unions and in many others have entered postal unity on various terms. Again, there are States which possess their own mints. Claims were also advanced by certain States to free grants of service stamps, free grants of stamps for official correspondence, free carriage of official correspondence. Moreover, some States levy transit duties and land customs. The Peel Committee discussed inland customs duties, and though they approved their abolition in principle, they felt that it should be left to the discretion of the States concerned. The Davidson Committee recognised the fact that the Indian States are not a collective unit, and cannot therefore be dealt with as a whole. Individual settlements must be made with each State on the basis of a balance-sheet which takes account of "credits" and "debits". The paramount Power will make separate agreement with each State which enters the Federation on this basis. The Committee pointed out that in an ideal Federal system there will no doubt be complete uniformity if not equalisation of burdens and of profits, but the circumstances of India are unique, as the Federated units are not homogeneous and vary infinitely in area, population and wealth. Again, Federal sovereignty will be exercised only in a limited sphere, and State units will maintain their sovereignty in non-Federal spheres intact. There are certain difficulties which are inherent in this system, and must be faced squarely. It is clear that the debits of one State cannot be set off against the credits of another; moreover, some States have only debits and others only credits to their accounts. The Committee proposed that the value of any privilege or immunity from ordinary Federal burdens should be set off against the proposed credit, and no remission or payment be made unless the credit exceeded the debit, and then only to the extent of the balance. In the case of tributes in excess of 5 per cent proportion of the revenue of a State, this principle will not apply and all States will benefit equally. The recommendations of the Committee and provisions of the Act on this subject will apply only to those States which enter the Federation. Those which remain outside will not participate in the benefits of these proposals.

How the States' Account is adjusted.—Two examples will suffice. State C is entitled to a credit of Rs. 5 lakhs annually on account of

a cash contribution; it also enjoys immunities of the annual value of Rs. 3 lakhs. The maximum remission to which State C will be entitled will be Rs. 2 lakhs as long as its immunity remains unchanged. State D is entitled to a credit of Rs. 4 lakhs annually on account of ceded territories; it also enjoys immunities of the annual value of Rs. 16 lakhs. State D will continue to enjoy its immunity, but will receive nothing on account of ceded territories, so long as the value of the immunity is *not* less than Rs. 4 lakhs annually. According to the scheme formulated by the Committee and incorporated in the Act, the contributions from the States would be a diminishing receipt, while the payments in respect of ceded territories for a term of years would be an increasing liability on Federal revenues. The gross amount of the cash contributions of the States to Federal revenues will not in any case exceed Rs. 63 lakhs a year. They will not be entirely extinguished so long as any immunities remain outstanding in account with the contributing States. At the same time, the entry of States into Federation will entitle them to receive *pari passu* with the extinction of contributions, annual payments on account of ceded territories which might amount to approximately Rs. 37 lakhs. The Committee estimated the amount that will be paid to the States at Rs. 1 crore. This is, however, a gross figure, as certain States enjoying immunities will continue to pay cash contributions so long as their immunities remain. The Committee conclude: "If, after every adjustment has been made and every consideration which we have mentioned has been taken into account, there is still a substantial balance against British India, even this is not the last word. *By the very fact of their entry into Federation, the States make a contribution which is not to be weighed in golden scales.*"

The foregoing scheme represents an amount of labour which is amazing. The Second Peel Committee on Federal finance accepted the basic principles of the Committee in paragraphs 22-32. They state in paragraph 24, "we have not felt it to be a part of our duty to investigate the correctness of the details as regards contributions and immunities or privileges appended to the Davidson Report". Questions were raised as to whether certain immunities should rank for the adjustments proposed, in view of the nature of considerations on which certain States have agreed to pay and are still paying them. These proposals were embodied in the White Paper, and

approved by the Joint Select Committee. Mr. Winston Churchill's diatribe against this "bribe" to the States proved ineffective. He moved a series of motions of adjournment to "discuss" the attitude of the Princes, and saw in the huge, substantial Bill with forbidding schedule and portentous sections "a gigantic monument of sham built by pygmies".

Davidson Proposals embodied in the Act.—The opposition to the proposals failed to arouse interest, and the House of Commons passed them practically in the form in which they had been set out in the Committee's Report. We now turn to the analysis of the sections of the Act which deal with the subject under discussion. Section 145 lays down that there shall be paid to His Majesty by the Federation in each year sums stated to be required by the Viceroy for the exercise of the functions of the Crown in its relations with Indian States, "whether on revenue account or otherwise, for the discharge of those functions, including the making of any allowance in respect of any customary allowances to members of the family or servants of any former ruler of any territories in India". All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if the Act had not been passed, would have formed part of the revenues of India, are to be placed by His Majesty at the disposal of the Federation, but His Majesty has the right to remit the whole or any part of such contributions or payment (section 146).

Remission of Cash Contributions.—The next provision embodies the main recommendations of the Davidson Committee regarding remission of cash contributions and other cognate matters (section 147). It states that, subject to the provisions of subsection (3) of the section, His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the Accession of the State to the Federation, any cash contributions by that State. Subsection (2) states that, subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of the Act, (a) in return for specific military guarantees, or (b) in return for the discharge of the State from obligations to provide military assistance, there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid such sums as in its opinion ought to be

paid in respect of any such cession. The term "specific military guarantees" obviously excludes jurisdiction ceded by States over cantonments and railways. Again, it does not include annexed or confiscated territories. They had ceased to exist, and no claims can arise regarding them, or regarding the military obligations attached to them. British India has been built up from annexations and cessions by Indian States.

A State will not, however, be allowed to receive remission or payment or compensation until the Federal Government releases a part of the income tax for the Provinces in accordance with section 138 of the Act. The remission shall be complete before the expiry of twenty years from the inauguration of Federation, or before the end of the second period referred to in subsection (2) of section 138. The Crown will have to set the credit of each State in respect of any privilege or immunity enjoyed by the State against the tributes paid by it to the Crown, and in fixing the amount of any payments in respect of ceded territories, account is to be taken of such privilege or immunities. If a State enjoys several immunities, it will be taken into account in the valuation of its ceded territories (section 138, subsection (3) and paras. (a), (b) and (c)). A balance-sheet will have to be prepared, and its credit will be set against its debits as represented by its cash contribution. The Crown will pay only the balance of this account. The section applies also to cash contributions, and the Crown may agree that the capital sum or sums payable by the State before the passing of the Act shall be paid either by instalments or otherwise, "and such repayments shall be deemed to be remissions for the purposes of this section".

Contributions defined.—Cash contributions are defined as contributions in acknowledgment of the suzerainty of the Crown, including contributions payable in connection with any arrangement for the aid and protection of a State by the Crown, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with the State, or in respect of the maintenance of local military forces, or in respect of expenses of an agent. They also include periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of a territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value

of exchanged territory; and periodical contributions formerly payable to another State but now payable to the Crown by right of conquest, assignment or lapse (subsection (5) of section 147).

This comprehensive definition of cash contribution is based on the classification discussed above. It includes all the categories of cash contributions. "Privilege or immunity" is defined as (a) rights, privileges, or advantages in respect of, or connected with, the levying of sea customs, or the production and sale of untaxed salt; (b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt; (c) the annual value to the ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right mentioned in para. (b); (d) privileges in respect of free service stamps or the free carriage of State mails on government business; (e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and (f) the right to issue currency notes. These immunities or privileges do not include rights which have been surrendered upon the accession of a State. The Crown is not bound to take the latter, or any other right not included in the list, into account.

What every Instrument of Accession must contain.—No Instrument of Accession is to be deemed suitable for acceptance by His Majesty unless it contains provisions to give effect to sections 147 and 149 of the Act. It should duly contain provisions for determining from time to time the value to be attributed for the purposes of these sections to any privilege or immunity whose value is fluctuating or uncertain (subsection 7 of section 147). All payments made under section 147 and any payments heretofore made to any State by the Government of India or by any Local Government under any agreements made with that State before the passing of the Act are to be charged on the revenues of the Federation or of the Province, as the case may be. The value of immunities or privileges of a Federated State is to be set off against the share of taxes assigned to the State.

General Survey of the Financial Arrangements.—The financial provisions of the Act are an undoubted improvement on those of the Act of 1919. While Provinces have not secured fiscal

autonomy they have been guaranteed greater power than they possessed before. They will have greater freedom to borrow in the open market, on the security of the revenues, but such a freedom is worthless if the purse is empty. They will be allowed to set up their own Accounts and Audit Departments, but the aggregate cost of the two will be 24 and 40 lakhs respectively, and it is by no means certain that all the Provinces can afford to indulge in this luxury. But the Meston settlement is gone for ever, and they get a share of income tax plus subventions from the Centre, and, in the case of Bengal, 62½ per cent of proceeds of the duty on jute. Sir Otto Niemeyer has done something to make the new reforms possible. No express provision is made for Provincial Financial Departments, nor are Public Account and Finance Committees ordained. The Governor's Instrument of Accession instructs the Governors to see that due provision is made that the Finance Minister is consulted upon any proposal by any other Minister which affects the finances of the Province. The Centre is bound to increase its power and influence over the Province in diverse ways, and the cumulative effect of the different provisions will be to render the position of the Federal Government almost impregnable. One of the strongest reasons for the growing influence and unimpaired stability of the Centre is to be found in the close connection between City interests and the financial operations of the Central Government of India. It is in the interests of England to maintain the solvency of the Centre, for credit is an exceedingly delicate plant, and if India's credit is shaken in the money markets of the world the system which has been so laboriously built up by a succession of brilliant financiers may topple down.

Of the three partners in the Federation—the Centre, the Provinces and the States—the States undoubtedly come off best. Though they transfer their sovereignty to the Federation over a few specified subjects, they will have, at least on paper, an enormous reserve of administrative and legislative jurisdiction and will exercise exclusive jurisdiction over an exceptionally large field of administrative and financial activity. The Federation will have no control over the subjects, though coordination will be brought about by the Viceroy, who, both as the executive head of the Federation and as representative of the Crown in India, will act as a unifying element. The States have yielded corporation tax after great diffi-

culty and persuasion, but the tax will be collected by State authorities. The income tax will be levied exclusively in the Provinces, but a substantial part of it will be devoted to the expenses of the Federation, which will benefit the States no less than British India.

States' Contribution to Federal Fisc.—Again, the Federation will pay at least eighty lakhs a year for nearly twenty years to various States for commutation of their privileges and immunities and extinction of their cash contribution to the Federal fisc. The States' direct contribution to the Federal Budget for the expenditure on defence, which absorbs nearly half the revenue of India, is nil. They could not give up their rights over maritime customs, and it is unreasonable to suppose that they would waive their claim until they have secured most favourable concessions from the Government. Again, they have not agreed to abolish inland customs duties. The Act rightly safeguards free trade between Provinces. But many States derive substantial revenues from these internal customs duties, and in smaller States they are allied to octroi and terminal taxes. This will undoubtedly produce complications in administration. While they cannot be deprived of these revenues without compensation, internal freedom of trade in India ought to be established as soon as possible. The financial scheme evolved by the Round Table Conference is defective from the point of view of equality of Federal units. The incidence of taxation in the two classes of units varies considerably, and British Indian Provinces are called upon to pay a disproportionate amount of Federal expenditure. But financial theories are not always the safest guide in a labyrinth of conflicting interests and issues. The best defence that can be offered for this anomaly is that the members who negotiated the settlement were realists, and were obliged to deal as practical men with a number of problems which necessitated a series of workable and practical compromises. Thus alone could Federation be brought into existence. The cost to British India of attaining national unity and solidarity is not too high for the realisation of a dream of twenty centuries.

A Vision of New India.—May it not be that a revived and rejuvenated India will tap effectively the undeveloped resources of the country, and impart to the huge, unwieldy mass an amount of mercury which seems to be an indispensable element to success? Our future may be built upon dreams, but dreams are the only

source of inspiration to a people determined to be strong and united.

The writer may be pardoned for referring to the keen debates that took place in the first two Peel Committees as well as in the Joint Select Committee in 1931–33. The proceedings of these bodies were confidential, but as one who took a humble part in the discussions, he may be permitted to point out that the basic principle on which they were conducted was accepted by almost every person who participated in them. That principle may be expressed in the phrase—fiscal independence of Provinces tempered by the solvency and stability of the Centre. No Indian delegate ever ignored the need for a stable and solvent Centre, and few Autonomists pushed their theories of fiscal autonomy to an extent that would endanger the essential financial needs of the Centre. The dominant need which deeply influenced the members was the reconciliation of the requirements of the Centre with the imperative requirements of the Provinces. Acting mainly on this conception, the First Peel Committee had advocated the distribution of the net proceeds of income tax among the Provinces. Had the recommendations of this Committee been carried out, the difficulties inherent in the establishment of full-fledged provincial autonomy throughout India would have been mitigated, if not removed. It must, however, be admitted that the Centre would have been exposed to serious risks, and as a financial crisis in the Centre would have appalling consequences, both in India and England, counsels of prudence and discretion were rightly pursued, and the Government, acting on the recommendations of the Percy Report, resolved to reserve a certain proportion, not exceeding 50 per cent, of the proceeds of income tax for the Centre. The White Paper had left a certain margin, and Provinces could, under the formula, be assigned as much as 75 per cent of income tax. Sir Otto Niemeyer was not precluded from making recommendations to this effect, and could have advocated it in perfect conformity with the Act. But he decided not to take risks and contented himself with recommending 50 per cent for the Provinces in the sixth year of inauguration of provincial autonomy. This would have eliminated a series of grants, subventions and other categories recommended in the Report. The various forms of assistance from Central revenues proposed in the Report are :

(1) Cash subventions.
(2) 50 per cent jute duty for certain Provinces.
(3) Additional 12½ per cent jute duty.
(4) Benefits from debt adjustments.
(5) Prospective shares from income tax.

Moreover, as a result of the creation of the Provinces of Sind and Orissa, Bombay, Madras and Bihar secure substantial relief.

Subventions to Provinces.—Subventions to Provinces had been limited to certain deficit Provinces specified in the Percy Report as well as in the Report of the second Peel Committee. The writer may be permitted to state that the basic principle which the framers of the Peel Committee had in mind was different, in many important respects, from the recommendations which Sir Otto has presumably based upon it, and the wide and in some cases unjustifiable application of the original proposal has left the fiscal systems both of the Provinces and the Central Government in a state of considerable uncertainty and doubt. Leaving aside the permanently deficit Provinces, such as Orissa and the Frontier Province, as well as the Province of Sind, which stands on an entirely different footing, what justification can there be for a subvention to the United Provinces and Assam? Would it not have been better if both these Provinces had been permanently assigned a large proportion of proceeds of income tax? Why has Bihar been denied a subvention? It was recommended by the previous Committees for assistance. Again, why has Bengal been accorded special treatment, and given an additional 12½ per cent of the export duty on jute? This additional gift of 75 lakhs to Bengal is bound to affect the distribution of share of income-tax receipts among Provinces. The remedy for Bengal is clear. She ought to impose a tax on agricultural income and impress her absentee landlords with the need for rural development. The *per capita* and acreage incidence of land revenue in Bengal is much lower than that of some provinces, such as Madras. Indeed, it is calculated that it is actually less than half on the *per capita* basis.

Lack of Governing Principle.—There is no clear principle on which subventions and other forms of assistance are given to Provinces, and it is not surprising that other Provinces have seriously objected to special concessions recommended for certain favoured ones. The Secretary of State may dismiss complaints as irrelevant,

but the system itself is inherently defective. Once departure is made from the definite proposals of the second Peel Committee, it is difficult to understand the reasons on which these arbitrary recommendations are based. And their natural result is mutual bickering, recriminations, suspicion and jealousy. This is precisely what has happened. The views of the various Governments are set out in an Explanatory Memorandum published with the draft Order in May 1936 (Cmd. 5181, 9d.). The Madras Government contended that their comparatively sound financial position was due, not to intrinsic superiority of natural resources of the Presidency, but to prudent financial administration and adequate taxation. They pointed out that Bombay, with a population of 18 millions, benefits disproportionately by the allocation of 20 per cent of proceeds of income tax, while Madras, with a population of 44 millions, has an allocation of 15 per cent only.

The Bombay Government complained that no steps were proposed to correct the position in which the Presidency had been placed by the inherent unsoundness of the Meston Settlement, including the falsification of the forecast of revenue made by the Meston Committee, the complete failure of the anticipations of the Percy Committee, and the cost of development schemes in Bombay city undertaken at the behest of the Secretary of State. The Bombay Government conveniently ignored the enormous amount it had thrown away on the Back Bay Reclamation Scheme and the great strain thereby put on its finances; nor does it seem to have acknowledged the generosity of the Niemeyer Committee in placing at its disposal 20 per cent of the net proceeds of income tax. Moreover, separation from Sind will yield a net gain of Rs. 90 lakhs a year. In fact, a glance at the benefits which the two Presidency Provinces—Bengal and Bombay—will derive from the Report will convince anyone that not only has Northern India been unfairly treated, but also that the Government of Madras, the Central Provinces and Sind have not received their due. Bengal, however, was not satisfied with the proposals and asserted that she could "never rest content under a fiscal system which aims at protecting, largely at her expense as a consumer, the products of other Provinces while taxing her distinctive staple product for the benefit of the Centre; in other words, for the benefit of those Provinces. In the second place, the prosperity of Bengal is bound up with the prosperity of the jute

trade." Sir Otto Niemeyer has dealt effectively with this argument in his Report.

Finances of the United Provinces.—The United Provinces had a stronger case, and pointed out that its revenues are at present depleted by no less than Rs. 112 lakhs—the annual land revenue remission that has been given for the last five years, necessitated by the slump in agricultural prices. The land revenue remission carries with it a remission of annual rent to tenants amounting to Rs. 4 crores. They calculated their revenue deficit at Rs. 53 lakhs in the first year of autonomy, and the proposed subvention would reduce it to Rs. 28 lakhs. In the second year the deficit will be Rs. 7 lakhs. Hence, as a result of two years' working of the new Constitution, there will be a deficit of Rs. 2 lakhs. They therefore proposed that the subvention should be raised to Rs. 40 lakhs for each of the first three years, and be fixed at Rs. 25 lakhs as proposed in the Report for the remaining two years. The United Provinces Government have undoubtedly been faced by a grave agrarian problem since 1930, and but for the foresight and energy displayed during that period by Sir Malcolm Hailey and his successor, Sir Harry Haig, the Province would have been involved in an agrarian trouble of appalling magnitude. The Government in their memorandum on the Niemeyer Report forbore to point out the grave violation of the elementary canons of public finance during the disastrous régime of Sir William Marris, when the recommendations of the Economy Committee, appointed by that able administrator Sir Harcourt Butler, were practically shelved, and the enormous debt of a crore of rupees was contracted, not for the expansion of education, but for the construction of police buildings. The Legislative Council of the United Provinces had frequently drawn the attention of the Government of the day to the unsatisfactory state of its finances, and the reports of the Accountant-General, United Provinces, had brought out these irregularities for several years. The writer may refer here to his speeches on the United Provinces Budget in 1925–26, and the speeches of Mr. C. Y. Chintamani, leader of the Opposition, in 1927–28. But the Government pursued its improvident course until the accession of Sir Malcolm (now Lord) Hailey in August 1928. Had the old policy been kept up, the Province would have been bankrupt at the present time.

Of all the Provinces in India, the Punjab has been the worst

sufferer. It will start the new Constitution worse off than it is at present, and with no prospect of any relief until the sixth year. The Punjab Government contended that the comparative stability of its revenues during the past three years is attributable to four main causes: (1) a high standard of taxation; (2) drastic retrenchment; (3) the strictest control over expenditure; and (4) favourable harvests. Every other Province in India will get relief in some form or other, but the Punjab will receive from the Central revenues on the inception of the new Constitution less than it is at present receiving, and it will, in consequence, be for some years a deficit Province. Moreover, the scheme of distribution of income tax accentuates the illiberal treatment proposed for this Province.

Comparative Estimate of Assistance to Provinces.—A comparative estimate of various forms of relief proposed for different Provinces by the Niemeyer Committee, contained in the letter of the Punjab Government dated April 30, 1936, brings out the benefits secured by different Provinces (see opposite page).

From this it will be clear that Bengal receives the greatest benefit. She secures Rs. 243 lakhs from the jute tax and the scheme of consolidation of debt and Rs. 120 lakhs from proceeds of income tax. She will receive altogether Rs. 336 lakhs under the new scheme. Then comes Bombay with Rs. 224·5 lakhs. The cases of Sind and Orissa are exceptional. The Punjab will get only Rs. 49·7 lakhs and the United Provinces, Rs. 127·7 lakhs. The agricultural Provinces have fared badly, while the industrial Provinces, and particularly Bengal, have been generously treated. The scheme is inequitable and unfair, for it is these Provinces which supply the sinews of war, and have made remarkable progress since the Reforms Act of 1919. Sir Otto Niemeyer does not seem to have considered the political implications of his proposals, and the success of the new Constitution depends to a considerable extent on the cooperation and active support which they will render next year.

The Government of India's Despatch on the Report accepted the conclusions of the Niemeyer Report, though they would have liked to allot only 33 per cent to the Provinces and reserve the rest for the Centre. The grievances of many Provinces remained unredressed, and the cordial support of the Report by the Secretary of State, and the passage of the draft Order in Council through Parliament in June ended a controversy that had raged for the last five years.

Province	Financial Assistance already given, Proposed to be Given or which will be Effective Immediately on Introduction of New Constitution						Share from Income Tax which will accrue in full after Ten Years (on the Assumption that the Amount surrendered by Govt. will be Rs. 6 Crores)		Total of Columns 7 and 9 (in Lakhs)	Percentage of Total Amount already surrendered by the Govt. of India
	Relief from Separation of Sind and Orissa (para. 11)	Subvention proposed by Sir Otto Niemeyer (para. 24)	50% Share of Duty on Jute (based on figures in para. 22)	Extra 12½% of Duty on Jute proposed by Sir Otto Niemeyer (para. 22)	Benefit from Consolidation or Cancellation of Debt (para 21 and App. III)	Total	Percentage	Amount		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Madras . .	20	..	..	..	26·2	46·2	15	90	136·2	9·6
Bombay .	90	..	..	..	14·5	104·5	20	120	224·5	15·7
Bengal . .	..	..	168	42	33	243	20	120	363	25·6
U.P. . .	..	25(*a*)	..	..	12·7	37·7	15	90	127·7	9
Punjab . .	..	..	..	..	1·7	1·7	8	48	49·7	3·5
Bihar . .	8	..	10	2·5	22	42·5	10	60	102·5	7·2
C.P. . .	..	..	..	..	20·9	20·9	5	30	50·9	3·6
Assam . .	..	30	9	2·25	15·5	56·75	2	12	68·75	4·8
N.W.F.P. .	..	100(*b*)	..	..	12	112	1	6	118	8·3
Orissa . .	..	40(*c*)	1	·25	9·5	50·75	2	12	62·75	4·4
Sind . .	..	105(*d*)	..	..	·7	105·7	2	12	117·7	8·3

(*a*) For a period of five years.
(*b*) Subject to reconsideration at the end of five years.
(*c*) An additional Rs. 7 lakhs will be given in the first year, and Rs. 3 lakhs in each of the next four years.
(*d*) For a period of ten years to be reduced gradually thereafter (paragraph 13). In the first year an additional Rs. 5 lakhs to be given for the jail at Shakarpur.

Limited Scope of the Niemeyer Report.—It is necessary to point out that Sir Otto was not called upon to frame a complete scheme of distribution of resources between the Centre and its units. That work had been completed by previous Committees, and their recommendations embodied in the Report. The terms of reference of his Committee were limited to the specific points which had been left over for investigation. It was a task of extreme delicacy and infinite difficulty, and he has discharged it in a manner which must be deemed by all persons to be on the whole satisfactory. The scheme avoids the pitfalls of financial theory, and is essentially a makeshift arrangement. It is not, and cannot be, a final solution of a problem which has proved almost insoluble in most Federations. He has tilted the scales heavily in favour of the Centre, while among the Provinces Bengal gets the lion's share, and the Punjab has been penalised for her high standard of administration and the virility of her citizens. The old dole system reappears in the form of subventions, and no formative principle seems to have guided the author of the Report in allocating various forms of assistance to different Provinces. The industrial Provinces score heavily over the agricultural Provinces, while the Centre remains entrenched in its power and privileges. Had Sir Otto adopted a bolder course and recommended the allocation of 70 per cent of income tax on principles which would take into account the imperative claims of population no less than the legitimate claim of residence, a more intelligible and equitable system could have been evolved. Judged by the representations of Provinces, the new scheme will not enable the majority to bear the enormous strain that will be put upon them from April 1, 1936. The requirements of the Centre must necessarily be given priority, but Sir Otto seems to have overlooked the necessity for exploring ways and means of effecting economy in some of the departments, such as the Defence departments. Moreover, the distribution of income tax among the Provinces is made entirely dependent upon the successful working of railways, and Sir Otto himself admits that the situation is disquieting. Section 138 empowers the Governor-General to delay the distribution of income tax. Sir Otto now reinforces this section by making it dependent upon the successful and economical working of railways. The dislocation of finances in the Centre or the failure of railways to earn a profit will delay the process of distribution.

Keeping these considerations in view, it is clear that many of the Provinces will find their task almost hopeless, especially if after April 1942 the income tax is not distributed.

The Report broadly acceptable as a Makeshift Arrangement.— These criticisms of the Report have not been made in a carping spirit. As one who was engaged in a very humble and insignificant capacity in discussions on these subjects in London in 1931–33, the writer is fully conscious of the infinite complexity and extreme delicacy of these problems. The task of Sir Otto was Herculean, and he was called upon to evolve a scheme which would prove acceptable alike to the Centre and its units. The scheme must be taken as a whole, and we cannot pick and choose isolated items, and subject them to destructive criticism. Again, it must be judged essentially as a practical and businesslike document, based exclusively on the necessity for making the Centre and its units function efficiently at a time of transition, when problems of varying degrees of importance will confront everyone charged with the duty of running the new machine. Each province has its own peculiar difficulties, and Sir Otto could not suggest a general formula that would be applicable to all Provinces. He had to dovetail his specific recommendations into the general framework of his proposals, and what the Report loses in unity and integrity it gains in utility and practicability. Some Provinces have suffered while others have gained. This was inevitable in any scheme, and no proposals, by whomsoever designed, could satisfy everyone. The allocation of 70 per cent of income tax to the Provinces on principles which would take into account the peculiar needs of each Province might have alleviated the difficulty, but it would not have completely solved the problem. Sir Otto's scheme will at least enable the Provinces to start on an even keel.

CHAPTER VI

PUBLIC SERVICES

THE main services in India are divided into the following categories: A, All-India; B, Central; C, Provincial.

The great majority of Government officials in India are grouped into services corresponding to the difference of responsibility of work performed and qualifications required. The superior services are divided into two classes, according as they administer subjects which are under the direct management of the Government of India or subjects which are controlled by Provincial Governments. The former class consists of the Central services, which deal, *inter alia*, with Indian States and frontier affairs, with Posts and Telegraph, Audit and Accounts and with Scientific departments, such as Geological Survey and Archaeological Department. The other class, which works primarily under the Provincial Governments, comprises the all-India services. The latter differ essentially from the Provincial services, which are recruited in a Province solely for Provincial work. The all-India services are the main executive agents of the administration throughout the country.

Lee Commission Recommendations.—On the recommendations of the Lee Commission, recruitment for all-India services which dealt with the transferred branch of administration has been stopped and power has been delegated to Local Governments to recruit and organise their own services to replace existing services as they gradually disappear. Regarding the Central services, the Secretary of State in Council exercises control over a few departments such as the Political and Ecclesiastical departments, but the power to recruit, organise and control these services should be delegated to the Government of India.

The demand for the Indianisation of public services added an entirely new element to the problem of superior services. The Montagu-Chelmsford Report enumerated in paragraph 314 certain principles in dealing with these demands. It was held: (a) that the traditional characteristics of Indian services should, as far as poss-

ible, be maintained, and there should be no such swamping of any service with any new element that its whole character suffered a rapid alteration; (b) that there were essential differences between the various services and the various Provinces; (c) that there should be, as far as possible, an even distribution of Europeans and Indians between the different grades of the same service, that the cadre should not be disturbed by haphazard stratification; and (d) that a demand should not be created in excess of the supply. The Islington Commission had considered this question, but subsequent to the signature of its Report Mr. Montagu's historic declaration of August 1917 entirely changed the situation and the Montagu-Chelmsford Report stated that "the success of the new policy must very largely depend on the extent to which it is found possible to introduce Indians into every branch of administration". While they opined that Indianisation must be "a long and steady process", they recommended that recruitment of a largely increased proportion of Indians should be initiated without delay if the services "are to be substantially Indian in personnel by the time that India is ripe for responsible government". The preamble to the Government of India Act of 1919 stated that it was the declared policy of His Majesty's Government to provide for the increasing association of Indians in every branch of the administration. Orders were passed by the Secretary of State for India in 1919 and 1920 on the recommendations of the Islington Commission and in the light of those contained in the Montagu-Chelmsford Report.

Indian public opinion was, however, intensely dissatisfied with the slow pace of Indianisation, and the Legislative Assembly passed a resolution in February 1922 recommending to the Governor-General in Council that enquiry should, without delay, be instituted to devise ways and means to implement the Declaration of August 20, 1917, with particular reference to the increased recruitment of Indians for the all-India services. It also recommended that steps be taken to provide in India such educational facilities as would enable Indians to enter the technical services in larger numbers than had been possible so far. The views of the Provincial Governments were invited in a circular signed by Sir Samuel O'Donnell, Secretary to the Government of India. The question of Indianisation had now entered a new phase. It was no longer a question of how many Indians should be admitted into the public

services. The issue was now narrowed down to the question, "What is the minimum number of Englishmen which must still be recruited?" The situation could no longer be ignored, and His Majesty's Government appointed a Commission, presided over by Lord Lee of Fareham, to enquire into the organisation and general conditions of service, the possibility of transferring immediately or gradually any of their present duties to Provincial services, and the recruitment of Europeans and Indians respectively. The Commissioners submitted their Report on March 27, 1924, and no time was lost in implementing some of their recommendations.

Their proposals regarding the Indianisation of the Superior services may be summarised here. As the problem was confined practically to all-India services or Central services (Class I), it was one of the principal subjects of enquiry by the Lee Commission. The effect of the proposals with regard to the all-India services on the transferred side was practically to stop European recruitments; and Indianisation in the new Provincial services was complete, except in so far as the Indians themselves wished to recruit Europeans for special reasons. In the all-India services, which remain under the control of the Secretary of State, a substantial increase was made in the percentage of Indian recruits. In the Indian Civil Service 20 per cent of the Superior posts were reserved for Indians promoted from the Provincial Civil services; while in direct recruitment the proportion of Indians to Europeans was fixed at parity. In the Indian Police service 20 per cent of the Superior posts are to be reserved for the Provincial services. Direct recruits are taken in the proportion of five-eighths Europeans to three-eighths Indians. This gives a higher proportion of European officers in the Indian Police than in I.C.S., the Lee Commission being of opinion that the present conditions rendered this necessary. These recruitment figures were estimated by the Lee Commission to produce in the Indian Civil Service a fifty-fifty cadre of Europeans and Indians in fifteen years, and in the Indian Police service in twenty-five years. For the Indian service of Engineers in the Irrigation branch and in Assam recruitment was fixed at 40 per cent Europeans, 40 per cent directly recruited Indians and 20 per cent promotions from the Provincial Engineering services. This gives practically the same proportions as in the Indian Civil Service. In the Indian service of Engineers in Madras, where the two

branches have not been separated, recruitment is on the basis of 33 per cent Europeans, 45 per cent directly recruited Indians and 22 per cent promotions from the Madras Engineering services. In the Indian Forest service, on the other hand, a much higher rate of Indianisation has been laid down, the ratio of recruitment being 75 per cent Indians and 25 per cent Europeans. The Ecclesiastical Department consists of Europeans. In the Political Department the present rate of recruitment is approximately 25 per cent Indians to 75 per cent Europeans. In the superior telegraph, engineering and wireless branches of the Indian Posts and Telegraphs department, and superior Railway Revenue establishment of the State railways, facilities for training in India are being extended so that recruitment in India may be advanced as soon as practicable up to 75 per cent of the total number of vacancies in the Railway Department as a whole. For the remaining Central services no rates of Indianisation were laid down. This matter is left to the decision of the Government of India. But in practice it may be taken that Europeans will only be recruited for special reasons and that Indianisation will be practically complete. For the Audit and Accounts service, for example, recruitment has, since 1920, been made entirely in India.

Proposals of the White Paper.—The White Paper dealt comprehensively with this subject and embodied the rights of public services, whether appointed by the Secretary of State or by other authority. It may be regarded as the Magna Charta of the services, and dealt with many of the points which had considerably exercised the minds of all service men, whether Imperial or Provincial, with great thoroughness and lucidity. The services were not satisfied on a few points, and sent deputations to the Joint Select Committee.

Proposal 182 of the White Paper declared that "every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that time, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded." The general scheme of the White Paper regarding public services may

now be sketched. It safeguarded all the existing rights of persons appointed by the Secretary of State after the commencement of the Constitution Act with the exception of the right to retire under the regulations for premature retirement. This right was to be given only to officers appointed to the Indian Civil Service and the Indian Police up to the time when a decision on the results of the enquiry into the future of these services is taken.

Recruitment of I.C.S. and I.P.S. by Secretary of State.—The Government proposals made provision for continued recruitment by the Secretary of State to the Indian Civil Service, the Indian Police and the Ecclesiastical Department. The ratios fixed by the Lee Commission were to remain unaltered so far as the first two services were concerned. The Secretary of State for India would make provision for securing the rights of all persons appointed by him or employed on the kind of work for which their recruitment had been considered essential. The White Paper proposed that a Committee should be appointed five years from the commencement of the Constitution Act to frame proposals for the future recruitment of the Indian Civil Service and Indian Police. Some of the proposals of the White Paper were not based on the Report of the Services Sub-committee of the First Round Table Conference, and were whittled down by the Joint Select Committee. Indeed, the Joint Select Committee seems to have ignored the significance and importance no less than the representative character of the Services Sub-committee of the First Round Table Conference, and framed proposals which were directly and basically opposed to some of the conclusions of the Committee. Even the reasonable and cautious proposals of the White Paper to appoint a committee of enquiry into the Superior Services in India five years after the commencement of the Constitution was changed by the Committee, and reference to time-limit was deleted from the Bill. The recommendations of the Services Committee modified by the White Paper, and the proposals of the Government, were changed in material particulars by the Joint Select Committee.

As regards the Family Pensions Fund to which serving officers now contribute, the Government declared that assets constitute in all cases a definite debt liability of the Government of India and are the property of the subscribers. The list of the principal existing rights of officers appointed either by the Secretary of State in

Council or by some other authority are of the utmost importance to all public officials in India, as they will be applied not only to the present incumbents but also to future recruits. The White Paper proposed to safeguard these rights and extend them to all persons appointed by the Secretary of State after the commencement of the Constitution Act. The rights have been in part embodied in the Act of 1935 and in part will be provided for in Rules laid down by the Secretary of State under various sections of the Act. They are of such importance that they should be given textually, as set out in the White Paper (see Report of Joint Committee, Vol. I, Part I, pp. 373-75).

Principal Existing Rights of Imperial Services.—PART I. *List of Principal Existing Rights of Officers appointed by the Secretary of State in Council.* (*Note.*—In the case of sections the reference is to the Government of India Act of 1919, and in the case of rules to rules made under the Act.)

(1) Protection from dismissal by any authority subordinate to the appointing authority (section 96 B (1)).

(2) Right to be heard in defence before an order of dismissal, removal or reduction is passed (Classification rule 55).

(3) Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights or compensation in lieu thereof (section 96 B (2)).

(4) Regulation of conditions of service, pay and allowances and discipline and conduct, by the Secretary of State in Council (section 96 B (2)).

(5) Power of the Secretary of State in Council to deal with any case in such a manner as may appear to him to be just and equitable notwithstanding any rules made under section 96 B (section 96 B (5)).

(6) Non-votability of salaries, pensions and payments and payments on appeal (sections 67 A (iii) and (iv) and 72 D (3) (iv) and (v)).

(7) The requirement that rules under Part VII–A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (section 96 E).

(8) Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919 (section 96 B (3)).

(9) (i) Reservation of certain posts to members of the Indian Civil Service (section 98).

(ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved to members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State for India in Council (section 99), or, in case not covered by these rules, to be provisional until approved by the Secretary of State for India in Council (section 100).

(10) Determination of strength (including the number and character of posts) of all-India services by the Secretary of State for India in Council, subject to temporary additions by the Governor-General in Council or Local Government (Classification rules 24 and 10).

(11) Provision that posts borne on the cadre of all-India services shall not be left unfilled for more than three months without the sanction of the Secretary of State for India in Council (Classification rule 25).

(12) Appointment of anyone who is not a member of an all-India service to posts borne on the cadre of such services only to be made with the sanction of the Secretary of State for India in Council save as provided by any law or by rule or orders made by the Secretary of State for India in Council (Classification rule 27).

(13) Sanction of the Secretary of State for India in Council to the modification of the cadre of a Central service, Class I, which would adversely affect any person who was a member of a corresponding all-India service on March 9, 1926, or to the creation of any specialist Posts which would adversely affect the members of an all-India service, the Indian Ecclesiastical and the Indian Political Department (provisos to Classification rules 32, 40, 42).

(14) Personal concurrence of the Governor required to any order affecting emoluments, or pensions, any order or formal sanction or any order on a memorial to the disadvantage of an officer of an all-India service (Devolution rule 10).

(15) Personal concurrence of the Governor required to an order of posting of an officer of an All-India service (Devolution rule 10).

(16) Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (section 96 B (1)).

(17) Right of appeal to the Secretary of State in Council (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay or loss caused by negligence or breach of orders, suspension, removal or dismissal; or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council; and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification rules, 56, 57 and 58 P).

(18) Right of certain officers to retire under the regulations for premature retirement.

Principal Existing Rights of Other Services.—PART II. *List of Principal Existing Rights of Persons appointed by Authority other than the Secretary of State in Council.*

(1) Protection from dismissal by any authority subordinate to the appointing authority (section 96 B (1)).

(2) Right to be heard in defence, before an order of dismissal, removal or reduction is passed subject to certain exceptions (Classification rule 55).

(3) Regulation of the strength and condition of service of the Central services, Class I and Class II, by the Governor-General in Council, and of Provincial services by Local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who is a member of the service on March 9, 1926, should be made without the previous sanction of the Governor-General in Council (Classification rules 32, 33, 36, 37, 40 and 41).

(4) Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial service (Devolution rule 10).

(5) Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal and any order altering or interpreting to his disadvantage the rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services, the right of an appeal against an order imposing a penalty (Classification rules 56, 57, 58 and 54).

Until other provision is made under the Act of 1935, rules made under the Act of 1919 relating to Civil services under the Crown in British India which were in force immediately before the introduction of provincial autonomy, notwithstanding the repeal of this Act, will remain in force so far as consistent with the Act, and shall be deemed to be rules made under the approximate provision of this Act. The public servants are guaranteed all these rights, except the right to retire under the regulations for premature retirements. This right will be conferred only on members of the Indian Civil Service and Police up to the time when a decision is taken on the results of the enquiry which may be set up in the future of these services. The Act declares that no civil or criminal proceedings shall be instituted against any persons in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date except with the consent of the Governor or the Governor-General, as the case may be. All criminal or civil proceedings shall be dismissed unless the court is satisfied that the act complained of was not done in good faith (section 270). The section gives public servants a full indemnity against civil or criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of their duty.

If by reason of anything done under the Act the conditions of service of any person appointed to a Civil service or a Civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to him or in respect of any such person, he or his representatives shall be entitled to receive from the revenues of the Federal Government, or, if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable (section 249).

The new Act safeguards all Rights of Service.—The measure safeguards not merely "existing" but also "accruing rights" which a public servant has reasonable prospect of exercising in the normal course of his official career. If, for instance, it is proposed to abolish the commissionership in a particular Province, all persons who reach that grade will presumably be given compensation for loss of that post. Such right has been exercised in the past, and there is no

reason why it should not be guaranteed to the present incumbents or recruits who join the services later. But section 249 goes a great deal further and confers on the Secretary of State such wide powers and discretion that he will be entitled to grant compensation for any reason which he deems equitable and just. The interpretation of the phrase "accruing rights" involved considerable ambiguity and raised some most unfortunate controversies.

Central and Provincial Services.—The protection of officers in the Central service Class I, Central service Class II, Railway service Class I, Railway service Class II and Provincial services is provided in section 258, which lays down that no civil post which immediately before the introduction of provincial autonomy was a post in, or a post required to be held by members of, the services shall be abolished if their abolition would adversely affect any person who, immediately before the said Act, was a member of any such service except in the case of a post in connection with the affairs of the Federation by the Governor-General exercising his individual judgment, and in the case of a service in connection with the affairs of a Province by the Governor exercising his individual judgment. Further safeguard for these services is provided by sub-section (2), which lays down that no rule or order affecting adversely the pay, allowances of pensions payable to, or in respect of, a person appointed before the coming into operation of this part of the Act to a Central service Class I, to a Railway service Class I, or to a Provincial service, and no order upon a memorial submitted by any such person shall be made except—

"(a) in the case of a person who is serving or has served in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;

(b) in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by the Secretary of State, or the Secretary of State in Council, or is an officer in His Majesty's Forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor-General or the Governor, as the case may be, there was substituted a reference to the Secretary of State."

Protection of these Services.—The provisions regarding the protection of officers in the Central and Provincial services will be greatly appreciated by the members of these services. They are secured in the enjoyment of their rights by these and other sections. The White Paper had improved their position by guaranteeing them unimpaired exercise of their rights and mitigated the possibility of political influence in filling vacancies. The Joint Select Committee went further and laid down propositions which gave to these services guarantees and safeguards which had hitherto been confined to other services. The principle on which the Committee acted was perfectly sound. The services will be the linch-pin of the new Constitution and success will depend to a certain extent upon their energetic support. The importance of the administration in India has been reduced by the introduction of reforms, for with the increase in franchise and a substantial increase in the number of members in Legislatures throughout India, the need for a highly trained administration is still greater. The quality of the Ministers and members of the Legislatures will be affected by the expansion of Legislatures, ministerial crises and other causes. Changes in the Government are bound to be more frequent than they have been in the past, and in some Provinces the group system might introduce kaleidoscopic changes in the Ministry. The administration is bound to acquire greater power, as it will be the only element of stability in a confused political world, and the part hitherto played by Provincial services will undergo rapid transformation. The Lee Commission provincialised all the Imperial services employed by the Transferred departments on the sound principle that as these services are worked under Ministers the control of Ministers should be established. As all the subjects have been transferred, all the services ought to have been provincialised. This was the logical course, and Provincial representatives had pressed this course before the Services Sub-committee in 1930 with eloquence and vigour. But logic and politics are belligerent bedfellows, and in the opinion of an important section, the realities of the situation necessitated reservation of the Indian Civil Service and Police and a few others for appointment by the Secretary of State. Another drawback from which Provincial and Central services suffered must be frankly confessed. They did not equip themselves thoroughly for the task, and had little time to present their case

before the Joint Select Committee. The evidence given before the Committee by representatives of these bodies was good, so far as it went, but it did not go far enough.

Indian Legislatures should pass Acts safeguarding the Services.—The Joint Select Committee aimed at making the Governor-General and the Governor responsible for the Central and Provincial services respectively in precisely the same way as the Secretary of State is responsible for the Imperial services to which he makes appointments, and expressed a hope that Federal and Provincial Legislatures will pass local Acts guaranteeing to the services security on the lines on which the Secretary of State has framed his regulations for services recruited by him. This is one of the formative and constructive suggestions of the Committee, and will command general approval. The Act guarantees them important rights, but it ought to be supplemented by Provincial Acts whereby status and dignity no less than stability and security can be assured to persons whose contribution to our national development has been of the greatest value.

The success of the Constitution depends on the efficiency and discipline of the Crown services. As Provincial Legislatures will lack the trained experience and practical guidance of the official block and elected members will be thrown on their own resources, the changes in the Ministry of each Province will be frequent, and great opportunities await able and enthusiastic servants of the Crown in India. The brilliant work done by a long line of Indian administrators can be carried on with great success and the new Constitution given a chance if the services join in a common endeavour, as they have done since 1919, and serve India to the best of their ability. The distinction between different grades of services is now happily disappearing, and will completely disappear in a short time. The caste spirit among grades is not so rigid as it used to be, as the number of Indians in Imperial services has substantially increased, and differences will be gradually eliminated by team-work in the new régime.

Administration will be more powerful in the Future.—In the absence of organised bodies in a Province, coalition of various parties and consequent grouping of different elements will produce a state of uncertainty in the Government. The administration will acquire power and influence in proportion to the frequency and range of

these changes. The services will consequently have a firm grip on the Ministers, who will be comparatively inexperienced and will be dependent even for policy upon their able coadjutors. If the Crown services maintain their *esprit de corps* and remove all petty distinctions, they will be able to build up a strong and virile body of administrators inspired by the noble resolve to serve India to the very best of their ability.

Section 247 makes comprehensive provision for the regulation of conditions of service, pensions, etc., of persons recruited by the Secretary of State, and provides for the framing of rules with respect to matters for which no express provision is made by the Secretary of State, the Governor-General or the Governor, as the case may be. It lays down general principles regarding promotion, suspension from office, payment of pensions, etc. Provision is made in the next section (248) for complaints and appeals to the Governor-General or Governor as the case may be. It is unnecessary to go into the details of these sections, as they are based mainly on rights which are enjoyed by members of these services at the present day. Subsection (7) of section 247 provides that no rules made under the section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, of the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable. It is provided that where any rule made under the section is applicable to the case of any person, the case cannot be dealt with in any manner less favourable to him than that provided by the rule. The section is limited to persons recruited by the Secretary of State and does not apply generally. It is a very comprehensive and generous measure. The Secretary of State is to prescribe the rules relating to pay, leave, pensions and general rights, and in regard to medical attendance. With regard to matters for which no provision has been made by rules, the Governor-General is to prescribe the rules for officers serving the Federal Government, and the Governor for those serving the Province. No rule thus made is to give less favourable terms to these officers than

those enjoyed by them on the date on which they were first appointed to their posts. Promotion, suspension and leave for not less than three months of such officers are to be made by the Governor-General in the case of officers employed by the Federal Government, and in the case of officers employed in the affairs of a Province by the Governor. This is an entirely new provision and was incorporated in response to a general demand by representative organisations of these services. Salaries of officers employed by the Federal Government will be charged on the revenues of the Federation, and those employed by Provincial Governments on Provincial revenues, but pensions and Government contributions in respect of pension fund or provident fund are to be charged on Provincial revenues. It is important to notice that this section as well as sections 244-49 are confined to services recruited by the Secretary of State and certain other posts. They are not applicable to Provincial, Central or Railway services, which are governed by sections 258-60. There are also special provisions relating to judicial officers which are embodied in sections 253-56.

Special provision is made for the police. Where it is proposed that the Governor of a Province should, by virtue of any powers vested in him, make or amend or approve the making or amendment of any rules, regulations or orders relating to any police force, whether civil or military, he is to exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation of that force (section 56). The internal organisation of the force would be regulated by the Inspector-General of Police, and the conditions of service to the subordinate rank of the many police forces in India are to be such as may be determined by or under the Act to those forces respectively. The net result will be that all the acts or rules made under various Police Acts can be changed only with the approval of the Governor, and he will be charged with the duty of seeing that no political pressure of any kind is brought to bear in its organisation and discipline. In the sphere of law and order he will be entitled to reject any proposal of his Ministers or himself to initiate action which his Ministers decline to take, and will be competent to issue any executive order which he considers necessary.

The legal position and status of the Provincial and Central services has been greatly improved by this Act. Appointments to these services will be made in the names of the Governor-General and the Governor respectively, and no public servant appointed by the Governor-General or Governor will be subject to dismissal except by an order of the Governor-General or the Governor. The Joint Select Committee took a sound and statesmanlike attitude on this question, though it must be confessed that the safeguards which it designed are still incomplete and inadequate. Members of these services have a right to look to two essentials: in the first place, protection against individual injury which will be tantamount to breach of promotion; and secondly, protection against reorganisation of services in such a way as to damage their professional prospects. These two primary rights have not yet been fully safeguarded, and it is imperative that the new legislatures should pass Provincial Civil Service Acts guaranteeing the services security of tenure, as well as such other rights contained in List I of the White Paper quoted above as may be suited to their condition and requirements.

Governors' special Responsibility for the Services.—A special responsibility of the Governor is that of securing to the representatives of persons who are or have been members of the public services, of any rights provided or preserved for them by or under the Act and the safeguarding of their legitimate interests, and it will be the duty of Governors to see that adequate provision is made by the Legislatures to carry these into effect. The Joint Select Committee suggested that there is nothing derogatory to rights and powers of the Legislature in adoption of a special procedure, similar to the Consolidated Fund charges procedure of the British Parliament, under which certain salaries are authorised by a permanent statute, instead of being voted annually in the estimates of supply, and this is in fact generally recognised to be desirable procedure in certain circumstances. But in a slightly different connection, this procedure could not in practice be applied to the salaries of all public servants. It might, however, be applied by the Provincial Legislatures to certain classes of officers, and in particular to the higher grades of all services.

The Committee expressed the opinion that the status and rights of Central and Provincial services could not be inferior to the status

and rights of persons appointed by the Secretary of State in regard to two main points. In the first place, protection against individual injury amounting to breach of contract, against unfair treatment through disciplinary action or refusal of promotion, and in the organisation of services themselves as might damage the professional prospects of their members generally. Section 258 is intended to safeguard the position of these services and is a great improvement on the existing position. The section lays down that no civil post which before the introduction of provincial autonomy was a post in, or a post required to be held by some member of, a Central service Class I, a Central service Class II, a Railway service Class I, a Railway service Class II or a Provincial service shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any service so abolished, except (a) in the case of a post in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment; (b) in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment. No rule or order affecting adversely the pay, allowances or pensions to, or in respect of, a person appointed before the coming into operation of the Act is to be made except in the case of a person who is serving the Federal Government by the Governor-General, and of a person who is serving a Province by the Governor of that Province. The safeguard provided here does not go far enough, but generally the rights of the services are most effectively safeguarded in the Act. It also safeguards in general terms the position of the members of the Defence service as a whole on the recommendations of the Joint Select Committee. It guarantees certain rights to civilian personnel in the Defence services and to commissioned officers.

Section 235 lays down that the Secretary of State, without prejudice to the generality of his powers, and acting with the concurrence of his advisers, may specify what rules and regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval. The pay of members of these forces is to be charged to the Federal revenues. But clarification was needed of the position of members of the Civil Service as a whole, including not only the non-commissioned officers and men of the Defence Force in India,

but also the corresponding grades of civil officials whose work lies within the sphere of Defence and are paid from Defence estimates. Constitutional changes will not produce the same effect on the Defence services as on the Civil services in India, but they are entitled at least to the rights which are enjoyed by them at the present time.

Provincialisation of Public Services.—It was expected by Indian delegates that on the introduction of provincial autonomy all public services employed in the Reserved departments would be provincialised. They were strengthened in their belief by the recommendations of the Lee Commission in 1924, which lays down that all the services employed in the Transferred departments shall be Indianised. Those who advocated provincialisation did not necessarily wish to eliminate the European element altogether. Most of them were convinced that India will be in great need of trained and experienced European administrators in a few key positions. They argued that Provincial self-government logically necessitates control by the Provincial Government over the appointment of its servants. A public servant cannot serve two masters. If he is appointed by the Secretary of State, it may be extremely difficult for the Provincial Government to exercise sufficient control and supervision. The authority of such Government may be undermined, and in some cases actually flouted, by a public servant who is determined to assert his legal right. It may be said in reply that such cases have been exceedingly rare, and the relations between Ministers and public servants since the Reforms have been on the whole exceedingly harmonious. Provincialisation, however, did not necessarily imply Indianisation. A number of trained European officers would have been imperatively necessary even if complete provincialisation had been in operation, and almost every Province would have been obliged to recruit Europeans of the right calibre to some of the key services. Nor did it imply lack of coordination with the Federal Government. The Federal Public Service Commission would have recruited officers for Provinces.

The Services Sub-committee of the First Round Table Conference recommended that Indian Civil and the Indian Police Services should continue to be recruited on an all-India basis and the recruitment for judicial officers should no longer be made in the Indian Civil Service. It provided that the Indian Forest Service and

the Irrigation branch of the Indian service of Engineers should be provincialised. The majority of the Committee held that the recruiting and controlling authority of the Indian Civil Service and the Indian Police Service in future should be the Government of India. The Committee were of opinion that in future there should be no Civil branch of the Indian Medical Service; and no Civil appointments either under the Government of India or in the Provincial Government should in the future be listed as being reserved for Europeans as such.

The White Paper provided for continued recruitment by the Secretary of State for India to the Indian Civil Service, the Indian Police Service and the Ecclesiastical Department. It followed in the main the views of a section of the Sub-Committee, who held that the new Constitution should not be exposed to risk and hazard by a fundamental change in the system which had produced brilliant administrators for generations. But the Joint Select Committee went to the other extreme and not only adopted all the proposals of the White Paper, but added other services which they recommended should continue to be recruited by the Secretary of State. The recommendations of the Committee radically modified the proposals of the Services Sub-committee. The proposals were the results of a compromise among different sections and the Committee recommended the provincialisation of the Forest and Irrigation services. The compromise arrived at in the Committee regarding recruitment to the Indian Medical Service was rejected *in toto*. The Joint Select Committee rigidly maintained the Lee ratios for Indianisation in certain Imperial services, and refused to propose the precise date for the appointment of a Committee and to decide the question of future recruitment for the Indian Civil Service and the Indian Police. They rejected the time limit of five years which had been fixed for this Committee by the White Paper. The Joint Select Committee stated that "past experience leads us to doubt the wisdom of fixing a definite and unalterable date for the holding of an enquiry of this kind." They proposed that it should be left to the Government of the day, in the light of then existing circumstances, to determine whether after five years the time had arrived for such an enquiry.

Powers of Secretary of State.—Section 244 regulates appointments to the Indian Civil Service, the Indian Medical Services

(Civil) and the Indian Police Service by the Secretary of State. The Secretary of State is to determine the respective strengths of these services, and provision is made for appointment by the Secretary of State of persons in the Irrigation service, for the purpose of securing efficiency in any Province (section 245). All persons employed in the Political Department are to hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise as heretofore on not less favourable conditions. But subject to the provisions of the section (257) the provisions of Part X (Services) are not applied to such persons. Recruitment by the Secretary of State for all other services will cease. Special provision is made for maintaining the discipline of the subordinate ranks of the judiciary. Section 246 safeguards the position of officers of the Indian Medical Service, reserving posts for them of the number and character determined by the Secretary of State, while sections 247, 248 and 249 codify most of the rights and privileges of these services, and authorise the Secretary of State to prescribe by rules to be framed under the sections such conditions of service, pension, complaints and appeals as may be deemed necessary. The sections may be called the charter of Imperial services in India.

Regarding the Railway services, the Lee Commission had fixed 25 per cent of the total direct appointments to the Superior Railway service in India for British recruits. The Joint Select Committee recommended that this proportion should be continued and should include a due proportion of Royal Engineer officers. They added that "the new Railway Authority should in future appoint British recruits".

Recruitment to the Ecclesiastical department will be made by the Secretary of State, while the present arrangements regarding recruitment to the Political department, which is chiefly recruited indirectly by transfers from the Indian Army and the Indian Civil Service, will continue. Regarding the Irrigation service, the Joint Select Committee did not advocate recruitment by the Secretary of State. They examined the matter carefully and came to the conclusion that "Irrigation ought to become a Provincial subject". At present there are 67 Europeans and 69 Indians in the Irrigation branch of the Indian service of Engineers in the Punjab. The Committee were of opinion that the need for Europeans in the Forest and Irrigation services will continue to be felt, even after their pro-

vincialisation, and the Government of India, through the High Commissioner, will continue to recruit Europeans for these services.

The Committee made some constructive suggestions for co-ordinating the work of the Forest officers and advocated the establishment of a Forestry Board on which the Provincial representatives would serve. They suggested the recruitment of Forest officers on an all-India basis, through the Federal Public Services Commission. The actual appointment of the recruits should be made by the Provincial Government under which they intend to serve.

Regarding the Indian Medical Service (Civil), they stated that they were convinced on the information "supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil services", and held the Secretary of State must retain the power which he has possessed since 1920 to require the Provinces to employ a specified number of Indian Medical Service officers.

Indianisation of Services.—The respective strengths of the services recruited by the Secretary of State are to be such as the Secretary of State may from time to time determine, and he is to lay before each House of Parliament a statement of the appointments made. The proportions suggested by the Lee Commission for Indians and Europeans will, no doubt, be maintained. Again, special provision is made regarding conditions of service of the subordinate ranks of the various police forces in India. By section 246, the Secretary of State is empowered to make rules specifying the number and character of Civil posts under the Crown which are to be filled by persons appointed to a Civil service of, or a Civil post under, the Crown in India, and such posts should not, without the previous sanction of the Secretary of State for India, be kept (a) vacant for more than three months, (b) or be filled otherwise than by the appointment of such a person as aforesaid, or (c) be held jointly with any other post. Rules made under this section will be laid before each House of Parliament.

The Committee attached special importance to the independence of the judiciary, and framed proposals for the subordinate judiciary. The subject is dealt with in sections 255 and 256. Section 254 deals with the appointment of district judges. District judges, if not in service, are eligible for the post if they are barristers,

advocates of Scotland, or pleaders of five years' standing, and are recommended by the High Court. The White Paper had made no provision for the maintenance of the independence of the subordinate judiciary. The Joint Select Committee reported that "nothing is more likely to sap the independence of the magistrate than the knowledge that his career depends upon the favour of a Minister". It is the subordinate judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps even more important, that their independence should be placed beyond question than in the case of superior Judges.

Subordinate Judiciary safeguarded.—The Committee strongly recommended that candidates seeking to exercise political influence should be disqualified. The High Courts will play, as they ought to play, an important part in such appointments. The Committee thought it "of first importance that promotions from grade to grade from the rank of munsif to that of subordinate judge and also the leave and postings of munsifs and subordinate judges should be in the hands of High Courts, subject to the usual rights of appeal". The procedure actually adopted for these appointments would leave the Ministers comparatively little freedom or power. Candidates would be selected for appointment by the Public Service Commission, in consultation with the High Court, subject to any general regulations made by the Provincial Governments as to the observance of communal proportions. The Minister would be informed by the Commission of the candidate or candidates selected by them, and the appointment would be made by the Government on the Minister's recommendation. The Public Service Commission would of course act in an advisory capacity, but the Committee stated that they could "not conceive that any Minister would reject their advice or recommend an appointment without it". A recommendation by the Minister for appointment should only be made with the approval of the High Court and the Public Service Commission. These are some of the soundest and wisest suggestions of the Joint Select Committee, and will be generally approved throughout India. Though all of them have not been incorporated in the Act, they ought undoubtedly to be given effect to by administrative action on the introduction of provincial autonomy.

District Judges.—Appointments of persons to be, and posting and

promotion of, district Judges in any Province are to be made by the Governor exercising his individual judgment, and the High Courts are to be consulted before a recommendation as to the making of any appointment is submitted to the Governor. The district Judge in the Act includes additional district Judge, joint district Judge, assistant district Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, sessions Judge, and assistant sessions Judge. The Governor of each Province shall, after consulting with the Provincial Public Service Commission and the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate judicial service of a Province. The expression "subordinate judicial service" means service consisting exclusively of persons intended to fill Civil judicial posts inferior to the post of a district Judge.

The selection of candidates for admission to the service will be made by the Provincial Public Service Commission and the appointment will be made by the Governor (section 255). The posting and promotion of, and the grant of leave to persons belonging to, the Subordinate Judicial service and holding any post inferior to the post of a District Judge, is to be in the hands of the High Court.

These provisions strengthen the position of the members of the Judicial service, and are an adequate safeguard against political influence in the making of appointments. Even the subordinate criminal magistracy is not neglected, and section 256 lays down that no recommendation shall be made for the grant of magisterial powers to, or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district Magistrate of a district in which he is working, or with the Chief Presidency Magistrates as the case may be.

Subordinate Judges and Munsifs will be selected for the appointment by the Public Service Commission in consultation with the High Courts, subject to the observance of regulations, if any, regarding communal proportions. The appointments will be made by the Governor on the Minister's recommendations. It is expected that the Minister will almost invariably act on the recommendation of the Public Service Commission. The High Court's power to promote from grade to grade and also the leave and postings of Munsifs and subordinate Judges has been strengthened by express provisions made in the statute. A comparison of sections 106-11 of

the Government of India Act of 1919 with the Constitution Act of 1935 will bring this out. The Constitution not only strengthens the position of the subordinate judiciary, it also makes the High Court the pivot of judicial administration and gives statutory expression to these powers. The High Court will, under the Act, derive its authority from a parliamentary statute. In the appointments to posts of the district Judges and additional Judges, first appointments will be made, if a candidate is a member of the Indian Civil Service, by the Governor on the recommendation of the Minister after consultation with the High Court. The Joint Select Committee recommended that a recommendation for direct appointments from the Bar should be made from among the persons nominated by the High Courts subject to any general regulation in force regarding communal proportions.

The powers conferred by the Act upon the Secretary of State for India are not to be exercised by him except with the concurrence of his advisers. The services had insisted on this safeguard, as they felt that if a Secretary of State belonged to an advanced political party and held pronounced views on the subject, his administration might seriously affect their service. Some service associations had insisted on the insertion of special provisions requiring the concurrence of the Governor to the personnel of the committee of enquiry into the conduct of Imperial service officers. Such a demand was meaningless and unreasonable, as it will be one of the duties imposed on the Governor in discharge of his special responsiblity to see that the personnel of the proposed committee is satisfactory. The Joint Select Committee rejected their demand.

Section 262 provides that no person who is not a British subject shall be eligible to hold any office under the Crown in India. There are some exceptions from this rule: (1) the ruler or subject of a Federated State shall be qualified to hold any Civil office in the Federal Government; (2) the ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area "or territory adjacent to India" shall be eligible to hold office; (3) the Governor of a Province may declare that the ruler or any subject of a specified State, etc., shall be eligible to hold such office; (4) the Secretary of State may declare that any named subject of an Indian State or any named native of a tribal area or territory adjacent to India is qualified to do so; (5) finally, the

Governor or Governor-General may authorise the temporary employment for any purpose of a person who is not a British subject. The Act has extended the scope of previous enactments to a very large extent, and most of the restrictions on the appointment of State subjects in British India are removed. The expression, "native of a territory adjacent to India", was used as explained in the amendment to the House of Commons with a view to including Gurkhas in this category. This is a new provision, and was moved as an amendment to the Bill in the House of Commons.

Women Public Servants.—The eligibility of women for public offices is conceded, under certain conditions. Section 275 lays down that a person shall not be disqualified by sex from being appointed to any Civil service of, or Civil post under, the Crown in India, other than such Civil service or post as may be specified by any general or special order made: (a) by the Governor-General in the case of services and posts in connection with affairs of the Federation; (b) by the Governor of a Province in case of services or posts in connection with affairs of the Province; and (c) by the Secretary of State in relation to appointments made by him.

This section concedes part of the claims advanced by Indian women, and is undoubtedly a step in the right direction. The original proposal to declare women eligible for all offices in India was too revolutionary to be acted upon, and the compromise suggested by Sir Samuel Hoare, which was moved by him in the report stage, is eminently workable. There are certain posts for which women have a special aptitude, and they ought to be filled by capable and competent ladies. There is no dearth of such women in India. It is not likely that this section will be generally worked in the initial stages; but the progress of Indian women leads us to hope that they will soon play their rightful part in the administration of their country.

The Act empowers the Governor-General to entrust either conditionally or unconditionally to the Provincial Government or the rulers of Indian States functions on matters in relation to which the executive authority of the Federation extends, and the Federal Legislature may also confer powers upon Provincial Legislatures. The Federation will pay to the Province or the State the extra cost of administration incurred by them in connection with exercise of these powers in the future. There is a novel provision whereby, if

there is no agreement between the Federation and its units regarding the extra cost to be paid by the former, the matter may be determined by an arbitrator appointed by the Chief Justice of India. The Act lays down that Bills which either abolish or restrict section 197 of the Indian Code of Criminal Procedure and sections 80, 81, 82 of the Indian Code of Criminal Procedure shall not be introduced or moved in either Chamber of the Federal Legislature or by a Chamber of Provincial Legislature without the previous sanction of the Governor-General, or in a Chamber of the Provincial Indian Legislature without the previous sanction of the Governor in his discretion. The object of the section is to maintain the existing safeguards and to give the Governor-General or the Governor acting, in their individual judgment, power to refuse their consent to the introduction of such Bills. The Governor-General will decide whether the costs of damages awarded against a public official should be defrayed out of the public funds or not.

Public Service Commissions.—The Act makes provision for a Public Service Commission for the Federation and a Public Service Commission for each Province. Two or more Provinces may agree to have one Public Service Commission for that group of Provinces, and the Federal Public Service Commission may, at the request of the Governor of a Province with the approval of the Governor-General, agree to serve in any Province. The chairman and other members of the Federal Public Service Commission and the Provincial Public Service Commission shall be appointed by the Governor-General and the Governor respectively in their discretion, provided that at least one-half of the members of every Public Service Commission shall be persons who at the date of their respective appointments have held office for at least ten years under the Crown in India. The chairman of the Federal Commission shall be ineligible for further employment under the Crown in India, and the same rule applies to the chairman of the Provincial Public Service Commission except that the latter is eligible for appointment as chairman or member of the Federal or other Public Service Commissions. The Secretary of State, the Governor-General and the Governor may make regulations specifying the matters on which the Public Service Commission shall be consulted. Generally their powers include consultation on methods of recruitment to the Civil services and the principles to be followed in making

appointments, transfers and promotions from one service to another, and in laying down qualifications for such appointments; on all disciplinary matters affecting the Civil service on a claim for the award of a pension in respect of injuries sustained by a public servant in the course of his employment and payments of costs in defending a legal suit instituted against him.

The Federal or a Provincial Legislature may provide for exercise of other functions by these bodies if the Bill embodying these proposals receives the previous assent of the Secretary of State, the Governor-General and the Governor, as the case may be.

Anglo-Indians in Services.—Section 242 provides that in framing the rules for the regulation of recruitment to superior Railway services, the Federal Authority shall consult the Federal Public Service Commission, and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with Railway services in India, and particularly to the specific class, character and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable, to each community in India a fair representation in the Railway services of the Federation, but it shall not be obligatory on the authority to consult with, or otherwise avail themselves of the services of, the Federal Public Service Commission. Similar provision is made for the community in Customs, Postal and Telegraph services in subsection (3) of this section.

The Act effectively safeguards the due representations of the Anglo-Indian community in Railway services. The provisions for protecting the interests of the Anglo-Indian community were based on the recommendations of the United Provinces Simon Committee in 1929, and a year later the Services Sub-committee of the First Round Table Conference "recognised the special position of the Anglo-Indian community in respect of public employment and recommended that special consideration should be given to their claims for employment in services". The two pressing problems with which the Anglo-Indian community was faced on the eve of the Reforms were education and maintenance of their position in services for which they have shown special

aptitude. The Reform Act of 1919 had led to a substantial increase in the number of well-educated Indians who found a considerable proportion of posts monopolised by members of the Anglo-Indian community. While the numbers of Indian intelligentsia increased rapidly and brought in their train the problem of the intellectual proletariate, the Anglo-Indian community, on the other hand, lagged considerably behind the other communities of India, and was faced with the stern struggle and the keen competition which was soon felt in the various Government posts. It became clear to leaders of the Anglo-Indian community that unless special provision was made in the Act for safeguarding their position, they would not be able to face the severe struggle to which lack of high educational requirements exposed them.

Joint Select Committee Recommendations.—The Joint Select Committee was most sympathetic towards Anglo-Indian claims, and practically all the demands put forward were met. The Government of India published a communiqué on July 4, 1934, in which they allotted minimum percentages for various communities in the services maintained by the Central Government. The position of the Anglo-Indian community was greatly strengthened by allocation to it by the Government of India of a substantial percentage of posts in the Railway services as well as in other services maintained by the Government of India. The Muslim community regarded proper representation in the administration as an essential safeguard for its political existence, and though the percentage of posts in various services reserved for it was not proportionate to its representation in the Federal Legislature, the communiqué was welcomed by Muslims of India as a salutary measure.

Communal Representation in the Services.—In fixing a definite percentage for various communities in the public services the Government of India had *not* departed from tradition or precedent. The Bengal Government had led the way by fixing percentages for Muslims in the latter part of the nineteenth century, while the United Provinces Government had fixed percentages for Muslims in ten departments by rules and conventions; the Punjab had fixed such percentages for the urban and rural classes before the Reforms of 1919, while the Madras Government fixed percentages for Muslims, Indian Christians and others by a local Act. The nature of the provision whereby the position of the Anglo-Indian

community has been safeguarded marks it off completely from the others. Not only are percentages of posts "hitherto held" fixed, but the "specific class, character and remuneration" of such posts is also indicated in the Act. Again, it is made perfectly clear that the Railway Authority is not bound to consult the Public Service Commission regarding the fixation of percentages. Here again the policy is perfectly sound, for it is essentially a political issue, with which the Public Service Commission should have no concern whatsoever. Whatever views may be held in certain quarters regarding the utility of communal percentages in the administration —and it must be confessed that it is not an ideal solution of an exceedingly delicate problem—a measure like this is necessary as a temporary expedient in the present stages of the national development.

Reference may be made here to sections 240 and 241, which deal generally with the tenure of office of persons employed in Civil capacities in India and define the condition of service or recruitment to different services in India. These provisions are of a general nature and will be applicable to all persons who are members of the Civil Service of the Crown in India. Rules regarding the conditions of service, etc., will be made by the Governor-General in case of persons employed by the Federation, and the Governor in case of persons employed by Provinces. Their main importance consists in the fact that the executive heads of the Province and the Federation are constituted the supreme authority for the protection of their rights and privileges. Just as a member of the Indian Civil Service looks to the Secretary of State for India for the protection of his rights, so members of the Central and Provincial services will look to the Governor-General and Governor respectively for the maintenance of *their rights*. The rules to be framed by them cannot place him at a disadvantage in comparison with existing rules, and a Civil servant of the Crown is to have the same rights of appeal to the authorities from any order which punishes or censures him or alters or interprets to his disadvantage any rule by which conditions of service are regulated, or terminates his appointments otherwise than on reaching the age fixed for superannuation. They will constitute an advance in the position, status and statutory rights of the services.

High Commissioner for India.—Reference may be made here to

sections 251-52, which deal with the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts. The provisions of Part X (the services of the Crown in India) of the Act will apply to the staffs of the High Commissioner for India and the Auditor of Home Accounts, as if "the service of members of those staffs were rendered in India", and the functions of the Governor-General in his discretion will be exercised by the Auditor of Home Accounts in relation to that staff. All persons on the staff of the High Commissioner for India are to hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise, as theretofore, or not less favourable conditions. Regarding chaplains, the provisions of the Act relating to Civil services recruited by the Secretary of State are to apply to them also, and they will be entitled to all the rights and privileges of these services, with such modifications as may be necessary.

In relation to appointments to, and to the persons serving on, the staff attached to the High Court and the Federal Court, the Chief Justice of India and the Chief Justice of a High Court will frame rules for their respective courts. For future recruits, the Governor or Governor-General in his discretion may direct that no person shall be appointed save under rules made by a Public Service Commission. Rules thus made shall require the approval of the Governor-General or Governor, if they relate to salaries, allowances, leave or pensions.

Attractions of Service.—The administration will continue to attract Indians of the finest character and brains for the service of their motherland, and the tradition of a highly centralised bureaucracy, distinguished by efficiency and integrity and saturated with the rich and varied experience of over a century, will continue to influence the current and direction of Indian thought. The fact is indubitable that India still needs, and will continue to require, a corps of highly efficient administrators who will not only administer the district, but also give a lead on many important questions of the day.

The Act has tended to impart an element of stability to services, and nobody can deny that if they had remained discontented the new Constitution would have proved almost impossible to work. The Memorandum of the British Indian delegates had urged the recruitment of these services by the Governor-General, in his dis-

cretion. The change would have been merely one of form and not of substance, as the Governor-General in his discretion would have been obliged by the Act to carry out the instructions of the Secretary of State in this matter. The Joint Select Committee admitted this in their Report, but they were reluctant to make a "merely formal change which might at this juncture have an unfortunate effect on potential recruits". The Committee did not make any recommendation regarding the separation of judicial from executive functions. Indian opinion has been unanimous on this point for nearly a quarter of a century, yet no effective step was taken by it to give effect to this policy. Again, the recommendation of the Services Sub-committee "that recruitment for judicial officers should no longer be made in the Indian Civil Service", was ignored, though the Act has adopted the sensible step of abolishing the reservation of a proportion of judgeships in the High Court for the Indian Civil Service.

The defence of the Committee for the decision may be stated in their own words: "It is of the first importance that in the early days the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre. All the information which we had, satisfies us that in the present circumstances only the existing recruitment is likely to attract the type of officers required. We have come to the conclusion . . . that recruitment by the Secretary of State both for the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands." It must be regretted that even services with a glorious tradition and a brilliant record so much to their credit have not attracted of late a sufficient number of European recruits of the right calibre. The Secretary of State has consequently been compelled to supplement the competitive examination for European candidates for the Indian Civil Service. He may appoint such candidates without any examination on the recommendation of a Selection Committee acting with the assistance of the Civil Service Commissioners. Such candidates must have taken an Honours degree in an approved British University.

CHAPTER VII

JUDICATURE

The Federal Court

In a Federal Constitution a Federal Court is a vital necessity. It is at once the interpreter and the guardian of the Constitution, and a tribunal for the determination of disputes between the units of the Federation. Distribution of power between the Federal Centre and the units is the essence of Federation, and an independent and impartial organ is necessary for the demarcation of the respective spheres of activity of the Federation and the units.

Need for a Federal Court.—The body entrusted with this task must be impartial and independent of the Federation, the British Indian units and the Federated States. A Federal Court is needed not merely to maintain the delicate poise of the Constitution. It is intended to guard it against encroachments on the liberty of the individual and rights of citizens by the Executive no less than by the Legislature. It will be an effective check on the tendency of the Federal Executive to usurp the function of other organs of the Federal Government. The inordinate exercise of power by the Executive on the one hand, and immoderate and unconstitutional use of its rights by the Legislature on the other, are a serious obstacle to the smooth working of the Constitution, and the Federal Court is the only body that can act with authority and keep the different organs within the limits assigned to them by the Constitution. It guarantees the integrity, efficacy and potency of the contract between the Federation and the units. The history of the Supreme Court of the United States of America amply illustrates these features. It is a history of remarkable achievements, varied by fierce struggles with a few passionate and partisan Presidents, and these rare but Titanic struggles are the strongest justification for similar provision in India. The members of the Second Round Table Conference were almost unanimously of opinion that a Federal Court was an indispensable link in the Federal

chain, and there was no disagreement on the necessity for such a body. The subject was thoroughly discussed by the Federal Structure Committee of the Second Round Table Conference. The Committee agreed that the jurisdiction of such a Court should be both original and appellate. As regards disputes arising between the Federation and a State or Province or between two States, two Provinces or a State and a Province, the Court was to have exclusive original jurisdiction. The decision was based on the obvious fact that disputes between two units of the Federation could not be brought before the High Court of one of them. It would have produced an exceedingly curious position if the disputes between a British Indian Province and a small State in India had been brought before the "High Court" of the latter. The Federal Structure Committee held that such a Court should have seisin of justiciable disputes of every kind between the Federation and a Province, or between two Provinces, and not only disputes of a purely constitutional character. But in the case of disputes between the Federal Government and a State, between a State and a Province or between two States, the disputes must be confined to the interpretation of the Constitution. Had the jurisdiction of the Court been extended beyond the strictly constitutional sphere, it might have impinged upon the rights of States over subjects for which they had not acceded to the Federation. The jurisdiction of the Federal Court over Federal States will be confined to the Federal subjects enumerated in their Instruments of Accession to the Federation. The Committee was of opinion that decisions of the Court, given in exercise of its original jurisdiction, should ordinarily be appealable to a full Bench of the Court. In the case of disputes between a private person and the Federation or one of the Federal units, the dispute should come before the Provincial or State Court, in the first instance with the ultimate right of appeal, if the matter arises within the Federal sphere, to the Federal Court.

The Committee recommended that the Provinces and the States should be invested with juristic personality, so that they may become parties to litigation in their own right. This has been done by section 176 of the Act. The Committee resolved that the Federal Court ought also to have exclusive appellate jurisdiction from every High Court and from the final Court of every State, in

all matters arising in the Federal sphere. A suggestion was made that some plan should be devised whereby anyone desiring to challenge the constitutional validity of a law passed by the Federal or a Provisional Legislature could obtain legal decision in the matter at any early date after the passing of the Act, and that this be done by a declaratory suit to which some Federal officer would, for obvious reasons, be a party. Assuming, however, that legal proceedings of the kind are found possible, the Committee thought it should be confined to the Federal Court alone when the validity of a Federal law is in issue, though there was a difference upon the question whether in the case of a Provincial or State law proceedings might not be permitted in the first instance in the appropriate High Court or State Court.

Advisory Jurisdiction of Federal Court.—A suggestion was made by the Committee that the Federal Court should, for Federal purposes, be invested with some kind of advisory jurisdiction, such as that conferred on the Privy Council by section 4 of the Judicial Committee Act, 1833. The right to refer such case should be vested in the Governor-General, and in the case of a State should not be referred to the Court without the consent of the State. The Committee resolved that an appeal should not be from the Federal Court to the Privy Council itself, though the right of any person to petition the Crown for special leave to appeal was to be preserved. It recommended that the Court should be created and its jurisdiction defined in the Constitution Act. It should consist of the Chief Justice and a "fixed maximum" number of puisne Judges who would be appointed by the Crown and hold office during good behaviour. They would retire at the age of sixty-five, and would be removable before that age only by an address passed by both Houses of the Legislature moved within the fiat of the Advocate-General of India. There was a prolonged discussion on the location of such a Court, and Allahabad, Dehra Dun, Pachmarhi and Calcutta were suggested, but the Committee agreed to Delhi, owing to its central position. The Chief Justice was to be empowered to appoint other places for the sittings of the Court. A strong opinion was expressed in the Committee that the time had come for the creation of a Supreme Court for British India to which an appeal should lie from all Provincial Courts in substitution for a direct appeal to the Privy Council. Appeals from

the Court could lie to the Privy Council only with the leave of the Court or by special leave.

Discussions on a Supreme Court for India.—Differences, however, emerged during the discussions on the method whereby the Supreme Court was to be brought into existence. A strong body of opinion among British Indian delegates was keen on investing the Federal Court with this further jurisdiction. They proposed that the Court should sit in two divisions, one dealing with Federal matters and the other with appeals on all other matters from the Provincial High Courts. Many of the States' representatives dissented from this view and advocated complete separation of the Supreme Court from the Federal Court. Though the Indian States' delegates were not unanimous, a substantial majority held the opinion that the Federal Court, being an organ of the Federation as a whole, ought to be a distinct entity. Its individuality and personality as a distinctive Federal organ must be preserved intact. Their views were expressed by the Rt. Hon. Sir Akbar Hydari, the spokesman of His Exalted Highness the Nizam's Government, who put the case with great ability and lucidity. The battle raged for nearly two years, and the issue was not decided till the publication of the Government proposals on the White Paper. Sir Akbar Hydari stated in the Third Round Table Conference that "it was essential that the Federal Court should be a separate and distinct entity. A Federal Court was a constitutional necessity; a Supreme Court was not a matter of immediate importance, and, in any case, was the concern of British India alone. To visualise two divisions of the same Court, one Federal and Supreme, was to confuse the issue. A Federal Court was essential and would be required to be manned by Judges of outstanding integrity with a knowledge of constitutional law customarily associated with all-India interests and free from local prejudices. The question of a Supreme Court, on the other hand, was merely a question of supplementing the judicial system of British India."

A section of British Indian delegates was definitely opposed to the proposed Court. Sir Nripendra Sircar stated that the cost of such a Court would be prohibitive, for any right of appeal to the Supreme Court, even in the limited criminal field of capital cases, would be largely availed of, and some twenty to twenty-five judges would be necessary to deal with the work. "If the object of

the proposal was to escape eventually from the jurisdiction of the Privy Council, this was not possible, because the Privy Council exercised a prerogative power. Nor was this desirable. The Privy Council, sitting as the last impartial tribunal in an atmosphere remote from local colour and prejudice, had done much for British Indian jurisprudence during the last 150 years, and its services should not be lightly set aside."

Another strong argument advanced against the establishment of the Court was that it would be difficult to find, in addition to the Judges required for the Federal Court and the Provincial High Courts, a sufficient body of judicial talent of the right calibre to justify its existence. The champions of the Supreme Court were divided on the question as to whether it should be established as a separate Court or constituted as a division of the Federal Court. There was a lack of clear-cut, decisive and workable proposals on these subsidiary points, and the opponents were not slow to perceive this weakness. The strongest argument against a separate Supreme Court was its expense. If it was to act also as a Court of Criminal Appeal it would have necessitated the appointment of twenty to twenty-five judges on a salary of not less than Rs. 5,000 a month. Such a Gargantuan expenditure at a time of world-wide depression would have been a fit subject for caustic comment.

The position of the Government was clear. They were not opposed to the establishment of such a Court on principle, and were prepared to provide for its establishment in the Constitution Act. But they opposed its immediate establishment, as they stated that they were by no means convinced of its urgency. If India required the Court, the Indian Legislature could easily bring it into existence by passing the necessary legislation. There could be no effective reply to this contention, as the champions of the plan had built up an imposing edifice by claiming that there was an insistent demand by the Indian people for such a body.

In the White Paper the Government made provision for the Supreme Court of Appeal for British India in civil cases and in criminal cases where a death sentence had been passed, provided that an appeal did not lie to the Federal Court. The Supreme Court could be brought into existence by the Federal Legislature, but the introduction of any Bill promoted for this

purpose would require the previous sanction of the Governor-General at his discretion.

The Joint Select Committee rejects Proposals for a Supreme Court.—The Joint Select Committee rejected the Government's proposal. They thought that the Supreme Court of the kind proposed in the White Paper would be independent of, and in no sense subordinate to, the Federal Court; and it would be impossible to avoid a certain overlapping of jurisdiction owing to the difficulty of determining in particular cases whether or not a constitutional point was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes, and they were satisfied that the existence of two such Courts of coordinate jurisdiction would be to the advantage neither of the Courts themselves nor of the Federation. They were in favour of the establishment of a Court of Appeal for the whole of British India, and suggested that this would be most conveniently effected by an extension of the jurisdiction of the Federal Court and by empowering the Legislature to confer this extended jurisdiction upon it. The Court should sit in two Chambers; the first dealing with Federal cases and the second with British Indian appeals. The two Chambers would remain distinct, but the unity of the Federal Court would be maintained by enabling the Judges who ordinarily sit in the one Chamber to sit from time to time in other Chambers, as the Chief Justice might direct or the rules of the Court might provide. They also rejected the proposals which had been broached in the Second Round Table Conference for a Court of Criminal Appeal for British India. They stated that nearly all cases involving death sentences were tried in a district Court from which an appeal lay to the High Court, and apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Only three High Courts (excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts every prisoner under sentence of death can appeal for remission or commutation of sentence to the Provincial Government or, if he wishes, can ask for special leave to appeal to the Privy Council. In these circumstances the rights of a condemned man seem to be very fully safeguarded and no purpose will be served by adding yet another Court to which appeals could be brought. The verdict of the Joint Select Committee was decisive and the Government proposals for the establishment of a Supreme

Court were not incorporated in the Act. All impartial men must admit that the decision of the Committee was wise. The compromise suggested by the Joint Select Committee, and embodied in the Constitution Act, is based on sound principles, and suggests a development which is likely to be workable. Thus ended a controversy which aroused considerable excitement at times.

We may, in passing, glance at the proposals of the White Paper regarding the Supreme Court which were turned down by the Select Committee. They provided for the appointment of the "President" and Judges of the Supreme Court. The qualifications for appointment of these Judges were to be the same as those of the Federal Courts. The Supreme Court was to be a Court of Appeal from the High Courts in British India, whether established by Letters Patent or otherwise. Appeals to the Supreme Court in civil cases would be subject to the provisions now applicable to appeals to His Majesty in Council, including appeals by special leave, but power was to be reserved to the Federal Legislature to limit the right of appeal, so far as it depends on the value of subject-matter in dispute, to cases in which the value exceeds a specified amount not being less than Rs. 10,000. Appeals in criminal cases would lie only where reversed by a High Court and also where leave to appeal had been given by the Supreme Court on the consideration of a certificate by the High Court that the case was a fit one for a further appeal. On the establishment of the Supreme Court, a direct appeal from a High Court to the Privy Council in either civil or criminal case would have been barred. An appeal from the Supreme Court to the Privy Council was to be allowed in civil cases only by the leave of the Supreme Court or by special leave. In criminal cases no appeal would be allowed to the Privy Council, whether by a special leave or otherwise. The Joint Select Committee generally approved the proposals of the Government regarding the Federal Court, but they made certain important changes both in the original and appellate jurisdiction of that Court. The Government proposed to confine the jurisdiction of the Court to the Constitution Act, but the Joint Select Committee greatly widened the scope of the jurisdiction by suggesting that it should include not merely the interpretation of the Constitution but also the interpretation of Federal laws, by which they meant any laws enacted by the Federal Legislature.

Original Jurisdiction of the Federal Court.—In the case of exclusive appellate jurisdiction from any decision given by a High Court or any State Court the White Paper had confined its jurisdiction to the interpretation of the Constitution Act or of any rights or obligations arising thereunder. In this case also the Committee recommended that the jurisdiction ought to be extended to include the interpretation of Federal laws, as it is essential that there should be some authoritative tribunal in India which can secure a uniform interpretation of Federal laws throughout the whole of the Federation. The White Paper had provided that *no* appeal would lie under provisions dealing with the exclusive appellate jurisdiction of the Federal Court from any decision given by a High Court on a constitutional issue except by leave of the Federal Court or of the High Court of a Province, or unless in a Civil case the value of the subject-matter in dispute exceeded a specified amount. The Joint Select Committee practically retained this provision, but they recommended that the Federal Court should have a summary power of disposing of appeals or applications for leave to appeal in any case where they appeared to be frivolous or brought in for the purposes of delay. In the case of a State Court from whose decision an appeal is to be made, a different procedure was to be followed, and the granting of leave to appeal by the Federal Court would be in the form of Letters of Request directed to the ruler of the State to be transmitted to him by the Court concerned. These recommendations have been embodied in the Act.

Chief Justice and Judges of the Federal Court.—We may now take up the relevant sections and explain their implications in the light of the above recommendations. The Act lays down (section 200) that the Federal puisne Judges shall not exceed six. A Judge may resign his office by addressing under his hand the Governor-General; he may be removed from office by His Majesty on the ground of misbehaviour or of infirmity of body or mind if the Judicial Committee of the Privy Council, on reference being made to His Majesty, report that he ought to be removed. The qualifications for the office of a Federal Court Judge are as follows: he (a) has been for five years a Judge of a High Court in British India or in a Federated State; (b) or is a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of

at least twelve years' standing; or (c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession. A person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, and in relation to the Chief Justice of India, for the references in the foregoing paragraphs (b) and (c), for *ten* years there shall be substituted fifteen years. Hence the qualifications in the case of a Chief Justice of India are slightly higher than those of a puisne Judge. The latter may be a barrister, a member of the Faculty of Advocates of Scotland or a pleader of ten years' standing; the former must have had fifteen years' practice. The salaries and allowances of Federal Court Judges will be fixed by His Majesty in Council. Temporary vacancies in the office of the Chief Justice of India will be filled by the Governor-General appointing one of the Judges. The Court will sit in Delhi or at such other places as the Chief Justice of India, with the consent of the Governor-General, may from time to time appoint. Sections 204 and 205 embody the proposals of the White Paper as modified by the Joint Select Committee. By section 204 the Court shall, "to the exclusion of any other court", have an original jurisdiction in any dispute between any two or more of the following parties—that is to say, the Federation, any of the Provinces or any of the Federated States—if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

Federated States and the Federal Court.—This jurisdiction is not to extend to disputes in which a State is a party unless the dispute concerns the interpretation of the Act or of an Order in Council made thereunder, or the extent of legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State. The Instrument of Accession will determine the question of the application of the provisions of the Constitution to a Federated State, and the Federal Court, before it exercises its exclusive original jurisdiction in such matters, will have to decide whether, in the Instrument of Accession of a Federated State, the latter has actually acceded to the Federation for subjects which are in dispute. If the subject is not comprised in

the Instrument of Accession in such a case, unless provision is made by agreement between that State and the Federation or a Province, the Viceroy, in his capacity as His Majesty's representative for the exercise of the functions of the Crown in India, will exercise his paramountcy power and decide the point at issue. The jurisdiction of the Federal Court will also extend to a State if an agreement has been made under Part VI (Administrative Relations between Federation, Provinces and States) in relation to the administration in that State of a Federal law.

Original Jurisdiction of Court.—Subsection (1) of section 204 considerably extends the original jurisdiction of the Federal Court. The White Paper had proposed that it should be confined to interpretation of the Constitution Act or of any rights or obligations thereunder, and any matter involving interpretation of an agreement between the Federation and its units. The Joint Select Committee widened its scope by extending it to "Federal laws", and not merely the Constitution Act. Subsection (1) of section 204 goes even beyond this, and extends it to any dispute which involves any question, whether of law or fact, on which the existence or extent of a legal right depends. It is difficult to define the implications of this subsection precisely, but the last sentence of the subsection is sufficiently comprehensive to include all matters which arise under the Act. Again, the Federal Court will have no jurisdiction if a dispute arises under any agreement which expressly provides that the said jurisdiction shall *not* extend to such a dispute.

Subsection (2) of section 204 lays down that the Federal Court in the exercise of its original jurisdiction will not pronounce any judgment other than a declaratory judgment. Section 205 defines the appellate jurisdiction of the Federal Court in appeals from a High Court in British India. If the High Court certifies that that case involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder, an appeal is to lie to the Federal Court from any judgment, decree or final order of a High Court in British India. The High Court will consider in every case whether such question is involved, when leave for appeal is made, and of its own motion will give or withhold a certificate. Accordingly, even after such a certificate has been given, any party in the case may appeal to the Federal Court on the ground that any such question has been wrongly decided, "and on any ground on

which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall be made to His Majesty in Council, either with or without special leave" (section 205).

Appellate Jurisdiction of Federal Court.—Section 206 lays down that the Federal Legislature may by Act provide that in such Civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate aforesaid, but no appeal shall lie under any such Act unless (a) the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified in the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or (b) unless the Federal Court gives special leave to appeal. The White Paper had fixed the value of the subject-matter in dispute at Rs. 10,000, the existing limit in the case of appeals to the Privy Council. This has now been increased to Rs. 50,000 with a view to restricting the number of Federal Court appeals. If such an Act is passed by the Federal Legislature, consequential provision may also be made by a Federal law for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave. A Bill dealing with the subject is not to be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Section 207 deals with the appellate jurisdiction of Federal Courts in appeals from High Courts in Federated States. An appeal is to lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of the Act or of an Order in Council made thereunder, or the extent of the legislative and executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under the agreement made under Part VI of the Act in relation to the administration in that State of a law of the Federal Legislature.

An appeal under this section is to be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require the case to be so stated, and may return any case so stated in order that further facts may be stated therein. The appellate jurisdiction will be exercised by the Federal Court in Federated States only in accordance with the terms of the Instruments of Accession, or any other agreement that may have been made by that State. It will be the Instrument of Accession that will govern the extent of the Court's jurisdiction.

The appeal to the Privy Council is preserved. It may be brought (a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State or arises under an agreement made under Part VI of the Act, and (b) in any other case by leave of the Federal Court or of His Majesty in Council.

All authority, civil and judicial throughout the Federation, shall act in aid of the Federal Court, and it shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or investigation or punishment of any contempt of court which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders as to costs of, and incidental to, any proceedings therein shall be enforceable by all Courts and authorities in every part of British India or of any Federated State.

Special Procedure for States Cases.—A special procedure is designed in dealing with States, and it is laid down that in any case where the Federal Court require a special case to be stated or restated, or remit a case to or order a stay of execution in a case from a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause Letters of Request to be sent to the ruler of the State, and the ruler shall cause such communication to be made to the High Court or any judicial or civil authority as the circumstances require. The special procedure has been designed mainly with a view to safeguarding the rights of the Federated States. It is likely to involve a certain amount of delay, but there is no reason to

believe that it will interfere unnecessarily with the expeditious enforcement of the Court's orders. The difference will be merely of form. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all Courts in British India and, so far as regards the application and interpretation of this Act or any Order in Council thereunder, or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

If the Federal Legislature makes provision for enlarging the appellate jurisdiction of the Federal Court, the Federal Court will not be entitled to exercise its extended jurisdiction over any Federated State unless that State has expressly included it either in its original Instrument of Accession or a supplementary Instrument of Instruction. The expenses of the Federal Court will be charged upon the revenues of the Federation, and the Federal Court is given power to make rules, with the approval of the Governor-General, for regulating generally the practice and procedure of the Court. All proceedings of the Federal Court are to be in the English language.

Power of Governor-General to Consult Federal Court.—Another provision that marks a complete departure from existing procedure is embodied in section 213. This section may prove to be of great utility in preventing unnecessary delay and litigation. The White Paper had proposed to confine the points on which the Governor-General required the opinion of the Federal Court to "justiciable" cases. This would have considerably restricted the Governor-General's choice, and the Joint Select Committee altered it to "any matter of law". It is not limited to the Federal sphere and the right of referring any matter to the Court for an advisory opinion will be in the Governor-General's discretion. The section is as follows: "(1) If at any time it appears to the Governor-General that a question has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that Court for consideration, and the Court may, after such hearing as they think fit, report to the Governor-General thereon. (2) No report shall be made under this section save in accordance with an opinion delivered in open

Court with the concurrence of the majority of the Judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a Judge who does not concur from delivering a dissenting opinion." This section is based on section 4 of the Judicial Committee Act of 1833. The provision will prove most useful, but there are three points which must be emphasised in connection with it. In the first place, it must not be regarded as a convenient opportunity for the Governor-General to shift his responsibility to the Federal Court. The Governor-General in his discretion must bear this responsibility imposed upon him by the Act. He cannot ask the Federal Court to help him in dealing with delicate administrative issues. In the second place, the Federal Court must be kept severely aloof from all political or administrative controversies. Lord Bryce tells us that when the Judges of the American Supreme Court were asked to decide non-judicial issues, even they acted simply as partisans, and their judicial training proved of no avail in dealing with the irresistible claims of party loyalty. In the third place, it must be clearly understood that the report is merely an opinion and not a judgment of the Court. If a case is brought before the Federal Court in the ordinary way, it does not preclude the Federal Court from reversing its opinion. This may be justified on the ground that all the facts were not supplied at the time the opinion was given or that they were not given in the proper sequence. The jurisdiction of the Federal Court over the issue in its formal capacity remains. Finally, it is of special importance that no communal or directly political issue should be brought before the Court under this section, otherwise its prestige will be lowered.

American Precedents.—Such a provision has proved extremely useful in America. Many units of the United States of America have empowered the Governor or Legislature of a State to require the written opinion of Judges of higher State Courts on points submitted to them. Clause 25 of the Home Rule Bill introduced in the House of Commons in 1886 empowered the Lord Lieutenant of Ireland or a Secretary of State to refer a question for opinion to the Judicial Committee of the Privy Council. In the Home Rule Bill of 1892 this provision reappeared in the modified form of power to obtain, in urgent cases, the opinion of the Judicial Committee of the Privy Council on the constitutionality

of an Act passed by the Irish Legislature. According to article 13 of the German Constitution of 1919, "if there is a doubt or difference of opinion, the State authorities may appeal for a decision to the Supreme Federal Court in accordance with the more detailed provisions to be prescribed by a Federal law".

Lastly, reference may be made to a Canadian statute which amplifies section 39 of the British North America Act of 1867, whereby any fact or law touching the constitutionality of any legislation of the Parliament of Canada, or touching any other matter with reference to which he sees fit to exercise this power may be referred by the Governor in Council to the Supreme Court for hearing or consideration, and the Court shall thereupon hear and consider the same. The Court will certify to the Governor in Council for his information, its opinion on questions so referred, with the reasons therefor, which shall be given in like manner as in the case of a judgment upon an appeal to the said Court; and any Judge who differs from the opinion of the majority shall in like manner certify his opinion and his reasons.

Advantages of Plan.—The advantages of such a provision are obvious. It will be extremely useful to a citizen to get a disputed point of law decided once and for all. Under the present system there is no certainty such a point will ever be raised. It may not be raised till forty years after the enactment, and then it may completely dislocate commercial relations and may modify its scope. When such a point is raised after a lapse of years, the determination may be different from what the legal profession has expected, may alter that which has been believed to be law, and may make or overthrow private interests based on views now believed to be erroneous. The Dred Scott decision in 1857 declared the Missouri Compromise, carried by an Act of the American Congress in 1820, to have been beyond the powers of the Congress. The Supreme Court of the United States of America has given decisions in the Fourteenth and Fifteenth Amendments to the U.S.A. Constitution upsetting or qualifying Congressional legislation passed years before. Numerous cases could be cited from American legal history.

The Federal Court may, from time to time, with the approval of the Governor-General in his discretion, make rules for regulating generally procedure of the Court, and the rules may fix the minimum number of Judges who are to sit for any purpose. The Chief

Justice of India shall determine what Judges are to constitute any division of the Court and what Judges are to sit for any purpose. The Federal Legislature may confer such supplemental powers upon the Federal Court as are not inconsistent with any provisions of the Act. The administrative expenses of the Federal Court will be charged upon Federal revenue. Nothing in the chapter dealing with the Federal Court is to be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a Court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave. (See sections 214, 215, 216 and 218 of the Act.)

The Joint Select Committee came to the considered conclusion that three, or at the most four, judges will be sufficient in the beginning. The age limit of sixty-five had been suggested by the Federal Structure Committee in 1931; the White Paper had fixed sixty-two years both for Federal and High Court Judges, but the Joint Select Committee fixed sixty-five for the Federal and sixty for High Court Judges. The proposal of the Committee has been embodied in the Act.

High Courts of States.—Section 217 reads: "References in any provision of this part of this Act to a High Court in a Federated State shall be construed as references to any Court which His Majesty may, after communication with the ruler of the State, declare to be a High Court for the purposes of that provision". The need for such a provision had been pointed out by members of the Federal Structure Committee in discussion in 1931. It is designed with a view to maintaining the highest standard of justice and ability in Federated States, and the necessity for such a provision was recognised even by some of the States' delegates. It would be futile to ignore the enormous differences in the standards of large and small States of India. While it would be fair to assume that the standards of large States like Hyderabad, Travancore, Mysore, Kashmir, Bhopal, Gwalior and Baroda approximate to those prevailing in British India, it must be admitted by any impartial man that the legal training, equipment and experience of a Chief Justice in a small State drawing a salary of Rs. 150 a month, and liable at any time to be appointed Inspector-General of Police

or a Household Minister, must fall considerably short even of the minimum qualifications necessary for the post of munsif and subordinate judge in India. A palace revolution may cut short the brilliant career of a young gentleman of twenty-five or twenty-six whose father or uncle had found a safe and comfortable berth in the territory. Small States undoubtedly vary in efficiency, and some are highly efficient. But the paucity of their resources, the meagre salaries they dole out to their impecunious employees, who have to shift for themselves during an uneasy period of waiting, and the lack of time-sense they display in setting their unwieldy judicial machinery in motion, are not calculated to inspire confidence in their efficiency. Under the section the Crown has the important power to withhold recognition from a Court which does not conform to requisite standards of efficiency. The necessity for such a measure will be recognised by all who have experience of administration. The Federal Court will be the bulwark of civil freedom and national solidarity. Economic interests will tend to unite Indian States with British India, and a common Legislature will bring them into constant touch with one another. The uniformity of judicial administration will prove of the greatest benefit amidst divergent claims and conflicting interests. What the English language and the magnificent courts of law have achieved for British India, the Federal Court should accomplish for India as a whole.

The Federal Court is to be established shortly after the beginning of Provincial Autonomy. If it creates sound traditions, impresses its personality upon the High Courts of British India and Indian States, and maintains its independence and integrity with firmness and tact, it will be able to mobilise all the moral and intellectual resources of India for its supreme task. The Court will break up the artificial barriers between States and British India by acting as an arbiter in disputes between these two classes of units and between the units of the Federation. It will stand for the majesty of law and maintain the rights of citizens. If it emphasises the Federal point of view in the disputes between the units and the Federation, the danger to its prestige will be great. On the other hand it may simply aim at maintaining the Newtonian equipoise which the framers of the constitution embodied in the Act. By doing so it will be able to carry out the letter and spirit of the

framers of the Constitution and place on a solid foundation the liberties of the units—both Indian States and British Indian components. The two classes of units will naturally ally themselves in case of a common danger. All Federations tend to be absorptive in their working, and it is only with great difficulty and constant vigilance that the rights guaranteed in the Constitution can be preserved.

A great deal, no doubt, depends on the personnel of the new Court and the way it begins to function. It is of the highest importance that the Court should be immune from the least tinge of political influence. No Court can maintain its reputation unimpaired in an atmosphere of political intrigue and chicanery. Such a thing has fortunately rarely happened in India, but judging from the analogy of the United States of America the danger is by no means remote. The fathers of the American Constitution studied nothing more than to secure the complete independence of the judiciary. The President was not permitted to remove the Judges, nor Congress to diminish their salaries. Every possible precaution was taken, except the precaution of fixing the number of Judges of the Supreme Court. This lacuna in the Constitution was frequently utilised, and if the majority of the Judges of the Court belonged to the Republican Party and the President professed Democratic principles, he filled all vacancies with members of his party. The character of the Supreme Court therefore changed in proportion to the number of vacancies therein, and the intensity of difference between the President of America and the majority of the Senate. In some cases the number was deliberately increased by statute. In the first half of the nineteenth century, partisan Presidents carried on a species of guerilla warfare with a stubborn Court.

Need for safeguarding the Prestige of the Federal Court in India.—As Bryce points out, the party in power has filled vacancies in the American Supreme Court with its nominees, or altered the number of Judges by Federal statute. The Supreme Court has changed its political complexion frequently. From 1789 till the death of Chief Justice Marshall in 1835 it tended to increase the powers of the Federal Government; from 1835 to the War of Secession its sympathies were with the States. The Court inclined against any further extension of Federal power or of its own jurisdiction. In

a country like India, with a Constitution in which the Executive wields enormous power and where there will be appeal to the Courts on numerous points, the danger is greater still. A Federal Court must maintain its independence with inflexible courage and heroic perseverance. It may be called upon to decide many cases of important political and administrative character when disputes arise between States *inter se*, between States and Provinces, between Provinces and States, between a Province and the Federation or between the State and the Federation. Will it be able to develop the habit and cultivate the tradition of relegating exceedingly delicate and inflammable issues, which may sweep like prairie fire over the torrid plains of India, to the dry atmosphere of judicial calm? President Jefferson used a quaint metaphor to describe the functions of the Supreme Court: "It is a kite to keep the henyard in order". Will the new Federal Court be able to keep the "henyard" in order? It is calculated by an industrious and patient student of American Constitutional History (Professor B. James Brown Scott, *Judicial Settlement of Controversies between States of the American Union*, 1920) that between 1789–1923, there were thirty-nine cases in which the States of U.S.A. were parties. Every one of these cases was of the utmost importance in creating confidence in the Court as the supreme authority and guardian of the Constitution. Will the Indian Federal Court follow the best work of the Supreme Court of America, and act as a cement in the new Federal structure? Will it establish a tradition of harmonious combination of both classes of units with the ultimate object of establishing the reign of law throughout the length and breadth of this vast sub-continent? This must be the earnest hope of everyone in India.

High Courts in India

The Federal Structure Committee recommended in 1931 that the "existing law which requires certain proportions of each High Court Bench to be barristers or members of the Indian Civil Service should cease to have effect, though they would maintain the existing qualifications for the Bench". They also recommended that the office of the Chief Justice should be thrown open "to any puisne Judge or any person qualified to be a puisne Judge". These recommendations have been incorporated in the Act.

The inauguration of Federation will confront India with a phenomenon with which Federal Constitutions have long been familiar. In the unitary system which has prevailed in India from time immemorial, the question of the constitutionality of a statute has rarely arisen. The Indian Constitution of 1919 avoided the difficulty by investing the Central Legislature theoretically with supreme legislative power. In the Federal Constitution the powers of the Federal and Provincial Legislatures are rigidly defined, and a statute of a Legislature, whether Provincial or Federal, which violates the division of legislative power embodied in the Act would be *ultra vires* of the Constitution and would therefore be void. In Federal Constitutions a citizen is called upon to decide two questions in connection with almost every legal right. He has not only to find out what the law is, but also to assure himself that it is constitutional. The analogy between Federal and Provincial laws and the bye-laws of a local body must not be pressed too far, but it may be said that, just as the bye-laws of a company would be invalid if they were inconsistent with the company's charter, so laws of the Provincial or Federal Legislatures would be unconstitutional if they were inconsistent with the Constitution Act.

Juridical Jurisdiction of High Courts.—With the inauguration of Federation and the consequent delimitation of functions and powers of the units and the Federation, we have a clear, nay rigid, division of powers between the Provinces and the Federal Government. It is exemplified in the delimitation of legislative power between the units and the Federation embodied in the Seventh Schedule to the Act. It is also illustrated in the realm of finance, though it is not so rigid in this sphere.

It is true that in cases where the constitutionality of a statute is in dispute the Judges always lean in favour of the validity of an Act, and if there is a reasonable doubt as to the constitutionality of a statute they will solve it in favour of the statute. Where the Legislature has been left a discretion, they will assume the discretion to have been wisely exercised. Where the construction of a statute is doubtful, they will adopt such construction as will harmonise with the Constitution and enable it to take effect. When a statute is declared unconstitutional, its effects on contracts and other matters are disastrous. Rights cannot be built up under it; contracts which depend upon it for their consideration

are void; it constitutes a protection to no one who has acted under it; and no one can be punished for having refused obedience to it before the decision was made. And what is true of an Act void *in toto* is true also as to any part of an Act which is found to be unconstitutional, and which consequently is to be regarded as having never at any time been possessed of legal force (Cooley, *Constitutional Limitations*; compare Bryce, *American Commonwealth*). The difficulties of the citizen are indeed serious, and some of the States of America have adopted the method discussed above, and empowered the Governor of the State or either House of Legislature to seek the advisory opinion of Judges of the Supreme Court on such questions.

The India Act confers upon the Federal Legislature exclusive power to make laws touching the jurisdiction, powers and authority of all Courts in British India (except the Federal Court) with respect to subjects on which it is exclusively competent to legislate, while the Provincial Legislatures will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are competent to legislate. Entry 53 in the Federal Legislative List of the Seventh Schedule to the Act reads as follows: "Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list, and to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers". In the Provincial Legislative List, the competence of the Provincial Legislature is defined in entries 1 and 2 as follows: "(1) The administration of justice: constitution and organisation of all courts except the Federal Court, and fees taken therein". "(2) Jurisdiction and powers of all Courts except the Federal Court, with respect to any matters in this List; procedure in rent and revenue Courts." The Concurrent List has several entries dealing with the subject. They define the concurrent powers of the Federal and the Provincial Legislatures over the enactment or amendment of the Indian codes of law, such as criminal law, criminal procedure, civil procedure, contract, bankruptcy, evidence and oaths. Entry 15 is as follows: "Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list".

This is the application of the Federal principle to the juridical jurisdiction of the High Court. The distribution of legislative powers between the Federal and the Provincial Legislatures necessarily affects the juridical jurisdiction of Provincial High Courts. It will depend upon enactments of that Legislature which is competent to regulate the subjects in respect of which questions of High Court jurisdiction arise. Hence, the Federal Legislature alone will determine the jurisdiction of a High Court in respect of any matter upon which it has exclusive power to legislate, and the Provincial Legislature will determine the juridical jurisdiction of the High Court in respect of any exclusively Provincial subjects. In the case of the Concurrent Legislative List, subject to principles governing legislation in the concurrent field, both the Federal and Provincial Legislature will determine in respect of any matter on which the two parliaments are competent to legislate. It may be contended that under the Act Federal and Provincial Legislatures could deprive the High Courts of a part of their juridical jurisdiction under this procedure and transfer it to Courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India. They could pass laws to such effect, and the Act does not prevent this. It is, however, highly improbable that any Legislature in India will so act. The High Courts have the confidence and trust of every class in India, and such action by any Legislature would be generally condemned.

Particular power and authority is conferred upon the High Courts and regulated by the legislative authority which has competence in the matter to which they refer. For example, all power and authority which the High Courts may exercise under the Provincial Civil Courts Acts will be Provincial; the power and authority exercised under the Code of Civil Procedure or the Code of Criminal Procedure, both of which fall under the Concurrent List, will be Provincial or Federal according as the legislation undertaken is that of the Federal or Provincial Legislatures. The question of the independence of the High Court was the subject of many discussions in the Second Round Table Conference, the Consultative Committee of 1932, the Third Round Table Conference, and the Joint Select Committee. The issue was discussed with great keenness and interest and attracted considerable attention. The Act of 1919 placed the administrative functions of the High

Courts under Provincial Governments, and in some Provinces such administration was the subject of debate and interpellations.

The High Courts and Legislative Criticisms.—The High Courts have been subjected to a series of interpellations in Madras and Calcutta which could not but react on their dignity and influence. The Madras High Court was criticised for its failure to recruit non-Brahmins, while the Calcutta High Court was subjected to a fusillade of criticism for the paucity of Muslims on the Bench. A few facts culled from the proceedings of the Local Legislatures and other documents will suffice. On March 20, 1922, Mr. S. N. Mullick's motion for rejecting the demand for Rs. 50,000 for High Court paper books was carried in the Bengal Council by 46 votes to 33. Similar motions were moved in the Madras, Bihar and Bombay Councils. Some of the subjects were fit and proper for a legislative debate, and the speakers ventilated genuine grievances of the public on important occasions with restraint and moderation. But it must be confessed that the tone and temper of these discussions was hardly calculated to inspire trust and confidence in the integrity and impartiality of the administrative functions of the High Courts. With the grant of provincial autonomy and the increase in the size of Legislatures opportunities for such criticism have multiplied. Had the High Courts not been placed on a firm basis by the Act, the dangers inherent in irresponsible criticism of bodies which ought on all accounts to be regarded as above criticism might have seriously affected their moral authority and prestige. The framers of the Constitution were aware of the risks to which the High Court was exposed from partisan criticism and all united in keeping it above political or party strife. While it is unnecessary to detail the provisions of the new Act, which are practically a reproduction of sections 101 and 103 of the Government of India Act of 1919, it is important to notice that the organisation of the High Courts has, in some cases, been altered by the new Federal conception of its judicial functions on the one hand, and the perception of the imperative necessity for maintaining its independence on the other.

New Provisions Respecting High Courts.—It will be convenient to summarise the changes introduced by the Act in addition to those discussed above. (1) There is a fixed age-limit of sixty for the High Court Judges instead of the present practice, whereby an under-

taking to retire at the age of sixty is obtained from every Judge on appointment, no age limit being fixed by the Act of 1919. (2) Every puisne Judge is to be eligible for appointment as Chief Justice. Section 101 (4) of the Act of 1919 has been legally interpreted as rendering only barristers or pleaders eligible for the office of Chief Justice. Under the new Act a puisne Judge who belongs to the Indian Civil Service will be eligible for appointment if he has served for not less than three years as a Judge of the High Court. (3) The Act of 1919 required that at least one-third of the Judges of every High Court should be members of the Indian Civil Service and at least one-third should be barristers. The present Act has abolished this reservation. (4) The salaries, pensions, allowances, etc., of Judges shall in future be fixed by Order in Council, instead of as at present by the Secretary of State in Council; while additional Judges shall henceforth be appointed by the Governor-General in his discretion, instead of by the Governor-General in Council, and the same authority henceforth shall have power to fill acting appointments of Chief Justices and Judges instead of the Local Government.

Independence of High Courts secured.—The Joint Select Committee aimed at protecting the High Court from political influence, and reinforcing its authority and prestige by regulating more precisely than at present the nature and extent of its administrative jurisdiction over the subordinate Courts of the Province. They restored the age-limit fixed for the High Court Judges to sixty, as they felt that in India a Judge has in general done his best work by the time he has reached that age. They approved of the abolition of the provision which laid down that not less than one-third of Judges of the High Court must be members of the Indian Civil Service. This rule sometimes created difficulties in the selection of competent Judges. They stressed the necessity of continuing "in the interests of the maintenance of British legal traditions the recruitment of reasonable proportions of barristers or advocates from the United Kingdom as Judges of the High Court".

Their general attitude regarding the position which High Courts ought to occupy, and the supremely important part which they will be called upon to play in the maintenance of the highest standards of efficiency and integrity, will be clear from the following paragraph: "But in order that the position of the High Courts may

be fully safeguarded, we recommend that the Governor-General and Governor should be directed in their Instruments of Instruction to reserve for the signification of His Majesty's pleasure any Bill which, in their opinion, would so derogate from the powers of the High Courts as to endanger the position which those Courts are, under the Constitution Act, clearly designed to fill. We think that it is also of great importance that the powers of the High Courts . . . should be defined and confirmed by the Constitution Act, even where at present they rest upon the authority of the Provincial Government. We should add that in later paragraphs we make recommendations which are designed to confirm and strengthen the arrangements existing in many Provinces whereby the High Courts are given a large measure of control over the personnel of the subordinate judiciary; but we also think that the provisions settling definitely the nature of administrative superintendence to be exercised by the High Courts over the subordinate Courts in a Province should find a place in the new Constitution."

The following are deemed to be High Courts for the purposes of the Act:

The High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, Patna and Nagpur, and the Chief Court in Oudh.

The Judicial Commissioners' Courts in the North West Frontier Province and in Sind.

Any other Court in British India constituted or reconstituted as a High Court.

Any other comparable Court in British India which His Majesty in Council may declare to be a High Court for the purposes of the Act.

Qualifications for Judges of High Courts.—No person is to be qualified for appointment as a Judge of a High Court unless he—

(a) is a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates of Scotland of at least ten years' standing; or

(b) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a district judge; or

(c) has for at least five years held a judicial office in British India not inferior to that of a subordinate Judge, or Judge of a Small Causes Court; or

(d) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession.

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by Letters Patent until he has served for not less than three years as Judge of the High Court (section 220). Temporary vacancies in the office of Chief Justice and Judge of the High Court are to be filled by the Governor-General in his discretion, but permanent appointments will be made by the Crown under the Royal Sign Manual. A judge may, by resignation under his hand addressed to the Governor, resign his office. He may be removed on the ground of misbehaviour or infirmity of mind or body, if the Judicial Committee of the Privy Council make a report to that effect.

Every High Court will consist of a Chief Justice and such other Judges as His Majesty may from time to time deem it necessary to appoint. Every High Court is to have superintendence over all Courts in India for the time being subject to its appellate jurisdiction, and may (a) call for returns, (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts, (c) prescribe forms in which books, entries and accounts shall be kept by officers of any such Courts, and (d) settle table of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts.

High Court's Power over Subordinate Judiciary.—The position of the High Court *vis-à-vis* the subordinate Courts has been greatly strengthened by the express authority conferred upon it by the Constitution Act. The Government of India Act of 1919 conferred this power in section 107. The power has generally been understood to be of a strictly administrative character, but certain High Courts claimed that it conferred upon them wide juridical competence, and pointed out that it is not a power amendable by the Indian Legislature as it is not included in Schedule V of the Government of India Act of 1919. The new Act clears up this point.

Many Provinces have conferred power upon the High Courts in relation to the subordinate civil judiciary by Provincial Civil Courts Acts. Thus in Madras the civil subordinate judiciary of the munsif

class are appointed and controlled entirely by the High Court; in the Punjab the High Court is given the power to nominate persons for recruitment as Subordinate Judges, which nomination must be accepted by the Local Government. By convention, High Courts are generally consulted in regard to the conferment of certain magisterial powers, such as those under section 30 of the Criminal Procedure Code. For all practical purposes the whole of the civil judiciary and to some extent the criminal judiciary form an administrative department under the High Court. The efficiency of this machinery is maintained by the vigilant care and close supervision which the High Court exercises over the subordinate judiciary. The new Act strengthens the control of the High Courts over the subordinate judiciary by making definite provision in sections 254 and 255. The High Courts will derive their authority over these Courts from the Constitution Act and this will be supplemented by Provincial Acts. The recommendations of the Joint Select Committee regarding the subordinate judiciary have already been discussed in the chapter on Services. It is worth noting that the Committee recommended that candidates for deputy magistrates, sub-deputy magistrates and tashildars for a first appointment should be selected by the Public Service Commission, and the appointment should be made from the candidates so selected by the Governor on the recommendation of the Minister. "In the case of subsequent postings or promotions the Ministers should ask for the recommendation of the district magistrate in consultation where necessary with the sessions judge of the district in which the subordinate magistrate works." If these recommendations are disregarded, some machinery should be devised for bringing the matter to the notice of the Governor.

The position of the Minister is not very clear in this process and a great deal will no doubt depend upon the ability and personality of the Minister. He is unlikely to submit to be ignored in appointments to judicial posts and may have something to say on the matter. The object is, however, perfectly clear. It is to strengthen the position of High Courts in such appointments and lay down clearly in the Constitution Act what has hitherto been derived from Provincial Acts or conventions. A further safeguard is provided in subsection (2) of section 228, which lays down that the Governor shall exercise his individual judgment as to the amount to be

included in respect of expenses of a High Court in any estimates of expenditure laid by him before the Legislature. The expenditure thus certified will not be voted on, though it can be discussed, by the Legislature. Hence not only will the Legislature be prevented from voting the salaries and allowances of the Judges of a High Court and the Provincial Advocate-General, as provided in section 78, subsection (3), paragraphs (c) and (d), but also the salaries, allowances and pensions of "the officers and servants of the Court" may be charged upon the revenues of the Province, and members may consequently be debarred from voting, though not from discussing, the grant.

No discussion can take place in a Provincial Legislature with respect to the "conduct" of a High Court Judge. The original clause of the Bill contained the words "in the exercise of his judicial functions". This was amended in the House of Commons and the word "conduct" substituted. Another amendment was moved in the House to make this provision applicable to "district judges" also. The amendment was fortunately defeated, as it would have deprived the Legislature of one of its most essential functions.

The Act finally decided a controversy in which some of the most prominent delegates took part. Under the Act of 1919, the administrative functions of Indian High Courts have been placed under the control of Provincial Governments. It must be admitted that the transfer of High Courts was the result of a serious mistake in the drafting of the Bill of 1919. The mistake was not rectified and Provincial Governments exercised their new powers with complete success. The Calcutta High Court, owing to its peculiar position, was directly under the Government of India, and friction between the High Court and the Bengal Government had led to strong representations by the Calcutta High Court. The question was discussed by the Simon Commission, who recommended that the Central Government should exercise direct control over *all* High Courts in India. The Commission, instead of transferring the Calcutta High Court to the Bengal Government, recommended that all High Courts in India should be centralised. A logical and practicable policy would have aimed at removing the existing anomaly and giving the Bengal Government control over the administrative functions of the Calcutta

High Court. The matter was not taken up in the First Round Table Conference, as there were more pressing problems to be discussed. But in the Federal Structure Committee of the Second Round Table Conference there was a thorough discussion on the subject. It was again discussed in the Consultative Committee, the Third Round Table Conference and the Joint Select Committee. The White Paper maintained the *status quo*, and the Joint Select Committee decisively rejected the plea of centralists. The Act is based on this recommendation. The Provincial Governments supported the existing system, though some High Courts advocated centralisation.

The Joint Select Committee rejected the plea of the Simon Commission and declared that the High Court is essentially a Provincial institution. They wished to secure for each High Court an administrative connection with the subordinate judiciary of the Province, which they regarded as of the highest importance, and which could not be maintained if the Court were an outside body regarded as an appanage of the Federal Government. They referred to the complexity of financial adjustments that would be involved in such a change. The Committee thus disposed of a problem which had perplexed India since 1928, and threatened to become a political controversy by the persistence with which the subject was resumed in each Committee. This was undoubtedly one of the greatest victories of the autonomists, and gave general satisfaction to that section.

Arguments in Favour of Provincialisation of High Courts.—The author may be excused for reproducing here a few extracts from a speech he delivered on the subject at a meeting of the Federal Structure Sub-committee on October 26, 1931:

"Before I deal with the question proper, I should like to make one or two points perfectly clear. In the first place, I should like to point out that, in the discussion of this matter, we are not concerned with the question of the appointment of the Judges of the High Courts or with their terms of office. Again, it is not contended by me or anybody that the administrative functions of the High Courts should be curtailed or withdrawn. I think it will be acknowledged by everyone that a High Court cannot perform its functions efficiently and satisfactorily without exercising its administrative functions. For instance, nobody has suggested that

section 107 or the relevant portion of the Letters Patent should be curtailed. Now, while this is granted, it will be admitted by everyone that the administrative functions of a High Court should be open to discussion by the Legislature. I will not decide here which Legislature it should be, whether Provincial or Central. In other words, the High Courts should not be irresponsible in the exercise of their administrative functions. There must be control by some Executive and a power of control by some Legislature. Which Executive and Legislature it is to be, I will discuss later on. Basing my arguments on these assumptions, the only question we have to decide now is by what Executive authority such control should be exercised and in what Legislature these powers should be vested. In other words, should the powers be vested in the Central or the Provincial Executive?

"I do not deny the force of some of the arguments which have been used by previous speakers with eloquence, ability and lucidity. There is, I admit, a danger inherent in any system which involves responsible government that the High Court may be dragged into the arena of party controversy. I submit, however, that this danger is not removed or lessened by shifting the High Court to the Centre. So far as I have been able to gather, the local Legislatures have discussed administrative acts of the High Courts on various occasions. Many of the subjects discussed were in themselves eminently appropriate for public debate, though it must be admitted that some of the motions have not been debated in a proper spirit. The remedy for these defects, however, is to be found in amending the standing orders of the Legislatures and not in taking entire control away from these bodies. While there have been a few cases in which a certain amount of very unfair criticism has been indulged in, it must be said on the whole that the method adopted in dealing with these motions has been fairly satisfactory. This is indeed admitted by the Judges of the Bombay High Court, the Chief Justice and two Judges of the Allahabad High Court, and the Judges of the Punjab High Court, who have said that their relations with the local Government have been amicable, and there has been, so far, no serious disagreement with the Legislative Council. So far as the local Governments are concerned, in their despatches to the Government of India on the Report of the Simon Commission practically every local Government has

emphasised the maintenance of the present relations of the High Court with the local Government intact without any modification and without any change. Only the official members of the Bihar Government have suggested centralisation, and the Bengal Government have said that the High Court may be centralised if High Courts in other Provinces are also centralised. Hence the consensus of opinion of the various local Governments is that the High Courts should remain in the position in which they now are, and also that there should be no disturbance or dislocation of the existing relations between the two bodies. I am therefore of the opinion that the rights which the local Governments now exercise over the High Courts should be maintained, so far of course as their administrative functions are concerned. I need not go elaborately into the reasons for these views, but I hope you will allow me to summarise them as briefly as possible.

"In the first place, if the High Courts are centralised the Federal Government would not possess the local knowledge which would enable it to discharge its duties properly. The local Governments are more familiar with the merits of candidates than the Federal Government can be. In the second place, there would be serious risk of conflict between the local Government, *which must have authority by virtue of its responsibility for the administration of its subjects*, and the High Court, which will also continue to exercise the power conferred upon it by section 107 of the Government of India Act. . . . The local Governments must rely to a very large extent on the High Courts for the maintenance of a high standard in the judiciary in the Provincial Courts. These Courts cannot maintain such a standard without the support of the local Government. One example will suffice. At present the High Court of Allahabad is empowered to remove a munsif without reference to local Government. If the High Courts are centralised, the question will naturally arise whether the local Government will allow the High Court to exercise such powers.

"Again, the Oudh Chief Court has power to report or punish the ministerial staff of any Court subordinate to it. It is doubtful if the local Government can allow any of its servants to be dismissed by an order of the Court which is under the executive control of the Federal Government. Then, my third reason is that the new Constitution will give the Ministry and the Legisla-

ture responsibility for the whole realm of Provincial administration. That range naturally includes the administration of justice. Even if the High Court is centralised, if the Council wishes to discuss the administration of the High Court it will have no difficulty in doing so when the demand for grants for the ordinary administration of justice is presented to it. Many of the demands placed before the Legislature will continue to be based on the recommendations of the High Court. I can say, from my experience of the Council, that it is difficult to prevent a discussion in relation to the High Courts even after they have been centralised. In the next place, it is in the local Legislature that complaints regarding delays in litigation, the location of Courts in various places and other matters are ventilated; and the procedure generally followed is that criticisms are passed on to the High Court, who, so long as they are under the control and administration of the local Government, do pay attention to them. Then, there will be a risk of friction and aloofness between the local Government and the High Court and a most unfortunate and unseemly conflict might develop between the highest judicial body and the local Government. In the High Court itself, amenities and scale of establishment would tend to be set up which would be out of proportion to those fixed for persons, departments and establishments somewhat similar in character. The personnel, discipline and working of the subordinate judiciary will be seriously affected by this change. Finally, if the High Courts are centralised the expenses of the High Courts will have to be borne by the Central Government."

The controversy was a prolonged one, but the battle was waged by both parties in a very friendly spirit. One side could quote the high authority of the Simon Commission with its full investigation into the working of the Indian judicial system. The eminence of the Chairman and the strong support which some of the most brilliant Indian lawyers rendered to the cause, greatly strengthened the hands of the champions of centralisation. On the other side were Provincial Governments, some able lawyers, a few Judges of High Courts and a few laymen who had parliamentary experience, but possessed no technical knowledge of the subject.

How High Courts were Provincialised.—Now that the question

of provincialisation has been finally settled, it is interesting to recall that the Provinces were given this power owing mainly to a mistake in drafting. It was by sheer accident that the Provinces have enjoyed the present power, as the framers of the Act of 1919 intended the maintenance of High Courts to be central.

Prior to the introduction of the Montagu-Chelmsford Reforms there was no classification of subjects as Central or Provincial, and there was no division of general administrative responsibility into functions assigned to the Government of India as opposed to the Local Government. The Act of 1919 for the first time introduced classification into Central and Provincial subjects, and the Functions Committee presided over by Mr. Justice Feetham made the constitution and powers of all the High Courts a Central subject. Entry 16 in the list of Provincial subjects proposed by that Committee ran as follows: "Administration of justice, including maintenance and organisation of courts of justice in the Province both of civil and criminal jurisdiction, but exclusive of matters relating to the constitution and powers of High Courts and subject to Indian legislation as regards constitution and powers of courts of criminal jurisdiction".

The exclusion of matters relating to constitution and powers of High Courts will have brought those matters within the Committee's proposed Central subjects comprised in entry 39, namely, "All matters expressly excepted from inclusion in the Provincial List". The Government of India, commenting on the proposed Provincial entry in paragraph 64 of their Reforms Despatch, suggested that in addition to High Courts, matters relating to the constitution of Chief Courts and Judicial Commissioners' Courts should also be excluded. They, therefore, improved the original draft by suggesting the following amended draft: "The administration of justice, including the constitution, organisation and powers of courts of civil and criminal jurisdiction within the Province other than a High Court, a Chief Court or the Court of a Judicial Commissioner, but subject to Indian legislation as regards courts of criminal jurisdiction".

The draft proposed by the Government of India would have made the High Courts a Central subject, by virtue of its exclusion from the proposed list of Provincial subjects. Messrs. Feetham and Stephenson, in a Memorandum to the Joint Select Com-

mittee in 1919, discussed the draft of the Government of India and suggested that the simplest plan would be to make all matters affecting these Courts subject to legislation, and they suggested the following draft which slightly amended the Government of India's draft: "Administration of justice, including the constitution, powers, maintenance and organisation of courts of civil and criminal jurisdiction within the Province, subject to Indian legislation as regards High Courts, Chief Courts and Courts of Judicial Commissioners and any other Courts of criminal jurisdiction". So far, the original object of the Feetham Committee had been maintained, and the amendments suggested by the Government of India had extended the jurisdiction of High Courts as a Central subject. But a mistake was now made in classification, which transferred all High Courts, except the Calcutta High Court, to the Provinces. This is one of those humorous interludes which lighten the grey monotony of sombre and soporific discussions and sedate conclaves, or carry our mind back to the days of Charles II, when, according to Bishop Burnet, the Habeas Corpus Act was passed by the Lords chiefly because the Government tellers in a division on the Bill counted one stout peer as equal to three votes. An India Office Reforms Committee inserted this draft by mistake in the Provincial List. This mistake automatically placed the administrative functions of High Courts under Provincial Government. This was fundamentally opposed to the intentions of the framers and members of the Functions Committee. Yet Mr. Justice Feetham remained under the impression that the High Courts would be a Central subject.

This came out in his oral evidence before the Select Committee, when Lord Sinha put to him the following question: "No. 16 is more or less a drafting point, is it not?"

Mr. Feetham's reply was: ". . . No. 16 might, I think, well be described as a drafting amendment".

The Committee accepted the recommendation of the India Office Reforms Committee, which was incautiously approved by Messrs. Feetham and Stephenson, and the results were startling. Instead of making the High Court a Central subject, an object at which Messrs. Feetham and Stephenson, the Government of India and almost everyone connected with reforms had consistently aimed, they ended by provincialising it. The situation had an

element of humour about it, and the grave and sedate law-givers, whose pet project had been wrecked, must have secretly chuckled over this curious development of their fixed resolve. Had the High Courts remained a Central subject under the Act of 1919 it would have been impossible for the Provinces to maintain their control over their administrative functions under the Act of 1935.

This is a much condensed account of one of the most constructive and brilliant chapters in the statute. Nobody can help being struck with the practical wisdom and sound statesmanship which underlies the formative sections on the Federal Court and the High Court. They mark a new stage in the evolution of the Indian judiciary, and their elasticity and flexibility will render them specially useful at a crucial time of our national development. No effort has been spared to free the High Courts from political influence and pressure. This is bound to raise them above the ebb and flow of politics and make them the most potent influence for the development of our intellectual resources.

CHAPTER VIII

THE SECRETARY OF STATE FOR INDIA; MISCELLANEOUS APPOINTMENTS; THE RAILWAY AUTHORITY; TRANSITORY PROVISIONS; EXCLUDED AREAS

THE SECRETARY OF STATE FOR INDIA

Council of the Secretary of State for India.—The White Paper declared that His Majesty's Government did not regard a Council of the kind which has been associated with the Secretary of State for India since the Crown took over the affairs of the East India Company in 1858 as any longer necessary in or appropriate to the conditions of the new Constitution. A proposal had been made in 1919 for the abolition of the Council by a Committee of the India Office, presided over by Lord Crewe, but it was eventually rejected and the Council was preserved intact in the Act of 1919. The powers of the Council are considerable, and have been exercised effectively on a few important occasions. When Parliament first assumed complete responsibility for the Government of India, the Bill of 1858 originally provided that the decision of the Secretary of State for India should be final in all matters on which there was a difference of opinion in the India Council, but the House of Commons restricted the powers of the Secretary of State over the expenditure of the revenues of India, firstly, by requiring the concurrence of the Council to grants or appropriations of any part of those revenues, and secondly, by requiring the consent of both Houses of Parliament to defraying from Indian revenues of the cost of any military operation beyond the external frontiers of India. Section 21 of the Act of 1919 laid down that, "subject to the provisions of this Act and rules made thereunder, the expenditure of the revenues of India, both the British India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues or of any other property coming into the

possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India". The Governor-General in Council could not, without the express order of the Secretary of State in Council, in any case (except when hostilities had actually commenced, etc.) either declare war or commence hostilities, or enter into any treaty for making war against any Prince or State in India or enter into any treaty for guaranteeing the possessions of any such Province or State.

Objects of Council Control.—The object of these provisions was perfectly clear. Parliament intended the Council to act as an effective check on the policy of Secretaries of State, some of whom had ambitious projects of Imperial expansion and military adventures in remote Asiatic countries, to be financed out of the Indian revenues. The provisions also afforded safeguards through the Secretary of State's Council against the expenditure of Indian revenues on purposes other than those which arose strictly out of the necessities of the Indian Government. These checks have undoubtedly proved effective in preventing expenditure out of the Indian revenues for Imperial purposes; and the Council has on more than one occasion enabled the Secretary of State to oppose Cabinet projects of the kind which would have committed India to heavy financial liabilities. It played an important part in the régime of Lord Morley and of one or two other Secretaries of State. But it must be admitted that it had outlived its utility and had become effete and lifeless. It was not consulted on important questions, and had neither the initiative to broach reforms, nor the persistence to maintain its traditional functions and responsibilities.

It had included men whose administrative experience, organising ability and force of character had raised them to the highest position in the land. They would have been an ornament to any assembly in the world; and their services to India in the years 1910–20 had been invaluable. But the Reforms of 1919 shifted the centre of political gravity from Whitehall to Delhi and Simla, and this factor, combined with the rapid changes through which India has passed since 1919, made the India Council an anachronism. The Constitution Act has fundamentally altered the structure and

functions of the old Council, while Federalism has radically changed the position of the Secretary of State for India *vis-à-vis* the Government of India. He can no longer be vested, as provided by section 2 of the Act of 1919, with the superintendence, direction and control over all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or from the revenues of India. The enormous powers which this provision conferred were incompatible with the transfer of responsibility to Indian Finance Ministers. Again, the Council of the Secretary of State for India could no longer be given the right of veto over expenditure from Indian revenues, in view of the introduction of complete provincial autonomy in the Provinces and partial responsibility in the Centre. The Constitution Act therefore vests in the Crown, on behalf of the Federal executive and Provincial executives respectively, all property now held in the name of the Crown which is required for their respective purposes, and these authorities are endowed with the right to enter into all contracts and assurances necessary for the performance of their functions, with the right to sue, and the liability to be sued, in respect of any claims arising in their several spheres of activity. The Act transfers to the appropriate authority, the Federal Government, the Provincial Government or the Railway Authority as the case may be, the rights, liabilities and obligations incurred by the Secretary of State in Council by contract or otherwise before the establishment of the new Constitution. The existing rights of suit and arbitration in England will be maintained against the Secretary of State as the successor to the Secretary of State in Council in respect of these liabilities. The Act embodies an important recommendation of the Federal Structure Sub-committee of 1931 by endowing the Federation and its units with a juristic personality, and any proceedings which, if the Act had not been passed, might have been brought against the Secretary of State in Council, may be brought against a Federation or a Province, according to the subject matter of the proceedings.

Liabilities of Provinces: how enforced.—All liabilities in respect of loans, guarantees and financial obligations mentioned in section 178 may be enforced against the Provinces or the Federation, according to the subject-matter of such liabilities. All lands and buildings

which immediately before the introduction of the Act were vested in His Majesty for the purposes of the Government of India shall, as from April 1, 1937: (a) in the case of lands or buildings which are situate in a Province, be vested in His Majesty for the purposes of the Government of that Province, unless they were then used for the purposes of the Federal Government or for the exercise of the functions of the Crown in relation to Indian States; (b) in the case of lands and buildings which are situate in a Province but not vested in the Government of that Province, and lands and buildings situate elsewhere in India, vested in the Crown for the purposes of the Federation; (c) lands and buildings situated elsewhere than in India will be vested in the Government of the Federation (section 172). The principle underlying this section is clear. It vests in the Crown on behalf of the Federal and Provincial executives all property required for their specific purposes. The latter are given the right to enter into contracts and to sue and be sued in the name of the Federation as the case may be.

Secretary of State's Advisers.—While the Secretary of State's Council has been abolished by the Act, provision is made whereby he is empowered to appoint not less than three and not more than six persons to advise him on any matter relating to India on which he may desire their advice. They will be styled advisers. Their number will be determined by the Secretary of State from time to time. At least one-half of his advisers are to be persons who have held office for at least ten years under the Crown in India and did not terminate their service more than two years before their appointments. Any person so appointed may resign his office to the Secretary of State for India, and in case of infirmity of body or mind may be removed by the Secretary of State for India. Advisers will be appointed for a term of five years, and will not be eligible for reappointment nor will they be capable of sitting and voting in either House of Parliament. Their pay is fixed at £1350 a year, but Indian advisers will also get a subsistence allowance of £600 a year (section 278).

The Secretary of State will not be bound by the advice of his advisers, and it shall be in his discretion whether he consults his advisers on any matter, and, if so, whether he consults them collectively or individually; but in matters concerning services recruited by him the powers conferred on him in Part X of the

Act, dealing with the services of the Crown in India, "shall not be exercisable by him except with the concurrence of his advisers" (section 261). This provision will be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one-half of those present in the meeting, or "if such notice and opportunity for objections as may be prescribed has been given to those advisers, and none of them has required that a meeting shall be held for the discussion of the matter". The services have secured a very effective safeguard in the advisers of the Secretary of State, as the accident or incidence of Parliamentary situations may place a man in office whose avowed policy and programme may materially change the special position allotted to them in the Constitution.

Expenses of India Office.—At present the expenses of the India Office establishment are paid out of the revenues of India, but an annual grant-in-aid of £150,000 is made by the British Treasury. The Joint Select Committee recommended that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service estimates of the United Kingdom. The Indian revenues will contribute a grant-in-aid in view of the functions which the Secretary of State and his department will continue to perform on behalf of the Government of India. Accordingly, section 280 lays down that as from the commencement of Part III of the Act the salary of the Secretary of State and the expenses of the department, including the salary and remuneration of the staff thereof, shall be paid out of the moneys provided by Parliament, but there shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from time to time be agreed to between the Governor-General and the Treasury, in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform. While the Secretary of State for India has been divested of powers over the revenues of India, and his superintendence, direction and control have been curtailed, his power over the Governor-General and Governors is substantial, and he can interfere not only in the sphere of special responsibility of Governors and Governor-General but also in the sphere of

exclusive responsibility which the Governor-General discharges in the Reserved departments. As special responsibility is not confined to any one subject but inheres or pervades almost every department and may emerge at any time, his power over the Provincial and Federal Governments is real. His superintendence over the Indian Governments, Federal and Provincial, will be as effective in future as it has been in the past. Section 14 specifies this power. It provides that "In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section". Subsection (2) lays down that before giving any directions under the section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

Miscellaneous Appointments

Advocates-General.—Section 114 of the Government of India Act of 1919 enabled the Crown to appoint by warrant an Advocate-General to the Presidencies of Bengal, Bombay and Madras. Subsection (2) of that section laid down that the Advocate-General for each of those Presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England. The functions of the Advocate-General were not precisely defined, and the nature of the work consequently varied in each of the Presidencies. The historical association of the Government of India with the Calcutta High Court made the Advocate-General of Bengal a law officer not only of the Bengal Government but also of the Government of India. The position became anomalous when Calcutta, the permanent home of the Advocate-General, ceased to be the headquarters of the Government of India. The anomaly would have been aggravated if the present position of the Advocate-General of Bengal had been maintained after the decision of the Government to place all the High Courts,

including the Calcutta High Court, under Provincial Governments. An Advocate-General for the Federation was an imperative necessity, and the Joint Select Committee recommended the creation of the new posts of Federal and Provincial Advocates-General. It will not be a political appointment, as it is not intended that he should occupy precisely the same position as the Attorney-General occupies in England. His advice will be limited to legal matters, and he will perform such other duties of a legal character as may be referred or assigned to him by the Governor-General. He will have the right of audience in all Courts in British India, and, in a case where Federal interests are concerned, in all Courts in any Federated States (section 16).

The Federal Advocate-General will be a man of standing and repute, will hold office on a settled tenure, will have no political association with the Federal Ministry, and will be appointed by the Governor-General in his discretion. The Committee also recommended the appointment of Advocates-General in all the Provinces, the aim being to secure for Provincial Governments legal advice from an officer not merely well qualified to tender such advice but entirely free from the trammels of political or party associations, whose salary would not be votable and who would retain his appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he might be associated during his tenure of office. "We think, in particular, that the existence of such an office would prove a valuable aid to a Ministry in deciding the difficult questions which are not infrequently raised by those prosecutions which require the authority of the Government for their initiation, though we recognise that the responsibility for decisions in these matters must of necessity rest in the last resort on the Government itself" (Joint Select Committee Report, paragraph 401). These proposals will not affect the position of Legal Remembrancer or Government pleaders and public prosecutors, nor will the Advocate-General have administrative control over these functionaries. He will be consulted on important legal questions, while on the details of administration the help of the Legal Remembrancer will be needed. In the three Presidencies which at present have Advocates-General, the Legal Remembrancers have also been maintained.

High Commissioner for India.—At the present time the Govern-

ment of India appoint a High Commissioner for India under section 29 (A) of the Act of 1919. He performs various agency functions on behalf of the Government of India and the Provincial Governments which were formerly discharged by the India Office. Under the new Act the High Commissioner is to perform on behalf of the Federation such functions in connection with the business of the Federation, and in particular in relation to the making of contracts, as the Governor-General may from time to time direct. He may also undertake to perform the same functions on behalf of a Province or a Federated State.

Discussions on the Statutory Railway Authority.—The White Paper made no arrangements for the administration of the Railways under the Federal Government, but it was considered to be essential that while the Federal Government and the Legislature would necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by companies) should be placed by the Constitution Act in the hands of a statutory body, so constituted as to ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference. With such a statutory body in existence, it would be necessary to preserve such existing rights as Indian railway companies possess under the terms of their contract, to have access to the Secretary of State in regard to disputed points and, if they desire, to proceed to arbitration. A representative Committee which sat in London in June 1933 made a comprehensive Report on the subject. In the event of a breakdown of the Constitution his right to assume to himself the powers vested in any Federal Authority must extend to powers vested in the Railway Authority. The Committee declared that the Constitution Act must lay down the governing principles on which a statutory Railway Board should be based, and the provisions of the Indian enactment on this matter should conform to these principles.

Part VIII of the Act deals comprehensively with the Federal Railway Authority. The executive authority of the Federation in respect of the regulation and construction, maintenance and operation of the railways is to be exercised by a Federal Railway Authority. It extends to carrying on, in connection with any Federal railways, of such undertakings as, in the opinion of the Authority,

it is expedient should be carried on in connection therewith (section 181). Not less than three-sevenths of the members of the Authority are to be appointed by the Governor-General in his discretion. This provision incorporates the recommendation of the Joint Select Committee and rejects the proposals of the Committee on the Statutory Railway Board that out of the seven seats on the Railway Authority two should be reserved for the Muslim community and one for the European community. The Committee on Railways was divided on the question as to whether—

(a) three members should be appointed by the Governor-General in his discretion and four by the Governor-General on the advice of the Federal Government; or,

(*b*) All the members should be appointed by the Governor-General on the advice of the Federal Government.

The Committee held that in exercising the control vested in it, the Railway Authority should be guided by business principles, due regard being paid to the interests of agriculture, industries, commerce and general public.

The Joint Select Committee stated that the Report of the Committee on the Indian Railway Authority provided a suitable basis for the administration of Indian railways, subject to two important considerations: (1) that no less than three of the seven members of the proposed Authority should be appointed by the Governor-General in his discretion; and (2) that the Authority should not be constituted on a communal basis. The power which the Governor-General will possess of taking action in virtue of special responsibilities, which include many matters affecting the Reserved departments, must extend to the giving of directions to the Railway Department. The special responsibilities of the Governor-General do not constitute, nor are they confined to, a separate department. They permeate every sphere of administrative activity, and may emerge in any department whenever the special interests or responsibilities with which he is charged are affected. The Railway Authority is no exception to this rule. The constitutional implications of the new proposals were not fully developed by the Railway Committee, and the new Act has made these proposals explicit. Nor was the position of Indian States under the arrangements proposed by the new Railway Authority clearly perceived. The representatives of Indian States on the Railway Committee

had pointed out the effect which such an Authority would have on the management of their railways and the possibility of uneconomic competition and even discrimination on the part of the Federal Legislature.

Contention of British Indian Leaders.—The British Indian representatives replied to this argument by pointing to the large and effective representation of States in both Houses of the Federal Legislature. Such representation would, in their opinion, prove effective in removing conflicts and cleavage between British India and the Indian States. The need for permanent machinery for arbitration proceedings on disputed issues in the Railway field was evident, in order that Indian States may, with confidence and trust, look on such machinery for effective protection in all disputes which may arise in future between British Indians and the Federated States. The proposals of the special Railway Committee in paragraph 12 of their Report regarding arbitration by a tribunal consisting of one nominee of each party and a chairman approved by both parties were defective, as such a Committee would not have inspired the confidence of either party, and the nominees of the two parties would have carried on their fight across the table. Such conflicts would have proved disadvantageous to commerce and industry. The Act provides for a tribunal presided over by a Judge of the Federal Court. This is undoubtedly an immense improvement on the original proposals.

It is unnecessary to repeat at this stage all the old arguments for and against the principles embodied in the Act. The railways are peculiarly susceptible to political influence and pressure, owing to the enormous number of persons employed therein, the patronage which the system as a whole confers and the supremely important part it plays in the life of the State. If the railways are honeycombed with intrigue and graft, and nepotism prevails, the whole system stands condemned. The greatest danger to the system consists in the manipulation of its enormous resources of men and material by a political party intent on introducing the spoils system and making it an instrument of party policies. These evils were so glaring in the United States of America that drastic reform has at last been carried out. In the self-governing dominions of the British Empire, railways were hopelessly involved in political controversies, and the inefficiency, extravagance and nepotism

which resulted were appalling. In Canada the control of railways was wholly political and produced pernicious effects on the public economy of the country. An Act of 1903, which has been freely amended since, constituted a Board of Railway Commissioners with very wide powers in fixation of rates and generally in the conduct and management of railways under Federal jurisdiction. They hold office for ten years, subject to the possibility of re-appointment, which is normal.

Need for protecting Railways from Political Influence.—In the Australian States, "the management politically was deplorable in results of waste and inefficiency", and the State of Victoria set up a Commission in 1884 to control the railways of the States. The situation had now become intolerable, and South Australia followed this example in 1887, New South Wales and Queensland in 1888, and Western Australia, after a great strike leading to the retirement of the general manager, in 1902. The Union of South Africa has probably gone furthest in the creation of an autonomous board for the railways. The railways, ports and harbours fall under the control of a Minister who is advised by a board of three Commissioners appointed for five years, but eligible for reappointment. The management under the Constitution is to be based on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of agricultural and industrial populations in the inland portions of all Provinces. The rates to be charged are not to exceed those necessary to meet the working costs, betterment, maintenance and depreciation as well as interest on capital not provided out of railway and harbour funds. The expenditure is charged on revenues, but is authorised by Parliament. In 1925 the attention of the Government was called by the Auditor to the fact that by using unskilled white labour at high rates of pay the Government was violating the section of the Constitution demanding administration on business principles (see Keith, *Responsible Government in the Dominions*, pp. 292-96).

Provisions for the Federal Railway Authority.—The principles on which the Federal Railway Authority is founded in the new Constitution Act are essentially the same. Section 183 lays down that "The Authority in discharging their functions under this Act shall act on business principles, due regard being had by

them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this part of the Act". The relation of the Authority to the Federal Government is stated in subsection (2). It says, "In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government". If any dispute arises under this subsection between the Federal Government and the Authority "as to whether a question is or is not a question of policy", the decision of the Governor-General in his discretion shall be final. The Governor-General will be empowered for the due discharge of his special responsibilities or the exercise of his functions in his discretion, or in his individual judgment, to issue directions to the Authority as regards matters entrusted to the Authority, as if the executive authority of the Federation in regard to those matters were entrusted to him and as if the functions of the Authority as regards those matters were the functions of Ministers. The executive authority of the Federation in respect of the regulation and construction, maintenance and operation of railways is to be exercised by a Federal Railway Authority. The authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith. The Authority will be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in the subsection is to limit the provisions of the Act regulating the relations between the Federation, the Provinces and the States.

Its Composition.—Not less than three-sevenths of the members of the Authority are to be persons appointed by the Governor-General in his discretion, and the Governor-General in his discretion shall appoint a member of the Authority to be President thereof. The Eighth Schedule to the Act deals with the qualifications and conditions for membership of the Authority. No Bill or amendment is to be introduced into, or moved in either Chamber of the Legislature, for supplementing or amending the provisions of the Schedule without the previous sanction of the

Governor-General in his discretion. The Governor-General, exercising his individual judgment, may frame rules for the conduct of business between the Federal Government and the Authority, after consulting the Authority. Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense (section 185). Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision that may be made by the Legislature, the Authority may sue or be sued in the like manner and in the like cases as a company operating a railway company may sue or be sued. The Authority may make working agreements with any Indian State with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee (section 191).

The separation of the Railway from the general budget is maintained in the Act. The Act provides that the Authority shall establish, maintain and control a fund which shall be known as the Railway Fund, and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions, shall be paid into that fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that fund (subsection 1 of section 186). The principle underlying the separation of the Railway budget from the general budget is sound and has worked successfully in the Government of India for a number of years. It had the approval of the Committee on a statutory Railway Authority. The Report of the Committee advised that "Revenue estimates shall be

submitted annually to the Federal Government, which will in turn submit them to the Federal Legislature; but these estimates will not be subject to vote. If the revenue estimates disclose a need for a contribution from general revenues, a vote of the Legislature will, of course, be required. The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature."

Railway Tribunal.—The Act makes provision for a Railway Tribunal (section 196) consisting of a President and two other persons to be selected in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative or business experience. The President will be selected from among the judges of the Federal Court and shall hold office for not less than five years. The Tribunal will exercise such jurisdiction as is conferred on it by the Act. An appeal is to lie to the Federal Court from the decision of the Tribunal on a question of law, but no appeal is to lie from the decision from the Federal Court in any such appeal. The Viceroy may delegate his powers regarding railways in a State that has not federated to the Authority. If the Railway Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, maximum or minimum rates and fares or station or service terminal charges, gives any direction to the federated State, the latter may complain that the direction discriminates unfairly against the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal (section 194). Rules may be made by the Governor-General acting in his discretion requiring the Authority and any federated State to give notice to such cases as the rules may prescribe of proposals for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

It was thought by many persons that the details of the proposed Authority would be embodied in a statute to be passed by the Indian Legislatures, and Parliament would confine itself to the enunciation of governing principles, but Part VII of the Act, which deals exclusively with the Railway Authority and contains 18 sections, as well as the Eighth Schedule, has left little for the Indian Legisla-

tures to do, except to tie up the loose ends. Almost everything of importance has been included in the "governing principles" formulated in eighteen comprehensive sections, some of them of portentous length.

The Transitory Provisions

To those who had studied the Federal scheme from the outset it seemed clear that some interval must elapse between the introduction of provincial autonomy and inauguration of Federation at the Centre. The framing of the Instruments of Accession in consultation with the States will be an exceedingly intricate and delicate process, as negotiations have to be carried on with each State, and this will involve prolonged discussions. There are, besides, other administrative problems awaiting settlement and decision. The duration of the interval between the introduction of provincial autonomy and Federation will be determined by the manner in which these preliminaries are settled. His Majesty's Government have not allowed the grass to grow under their feet. Their expedition has now made it possible for the Government to announce the inauguration of provincial autonomy in April 1937. It was admitted even by the most sanguine that the interval between the introduction of provincial autonomy and Federation can hardly be less than a year. It will probably be more, and may extend to two or even three years. So strongly did an important section of British Indian delegates feel the necessity for the introduction of reforms, that a proposal was actually made for immediate provincial autonomy. It did not, however, find favour with a large number of delegates, and after a somewhat stormy debate in the Federal Structure Committee in 1931 and a conciliatory speech by Sir Samuel Hoare in the plenary session of the Second Round Table Conference, the proposal was dropped and the original policy of one comprehensive Bill for the introduction of reforms both at the Centre and in the Provinces was consistently maintained. References were made also in the Consultative Committee to the need for speeding up of reforms, and the debate in that Committee, no less than the trend of opinion outside it, showed conclusively the advantages of the programme outlined by Mr. Ramsay MacDonald in his concluding speech at the plenary session of the Second Round

Table Conference. Reform, it was clear, could not be carried out piecemeal, and the Centre could not remain unaffected by the introduction of complete autonomy in the Provinces. The most enthusiastic supporters of simultaneous advance admitted that provision must be made in the Constitution for this interval, however short it may be; and His Majesty's Government embodied their proposals for the transition period in Proposal No. 202 of the White Paper. It laid down that "The Constitution Act, though treating the Federation as a whole, will contain provisions enabling the Provincial Constitutions, for which it provides, to be brought into being, if necessary, before the Constitution as a whole comes into being. Transitory provisions, also to be included in the Constitution Act, will enable, in that event, temporary modifications to be made in the provisions of the Constitution Act for the purpose of continuing the existence of the present Indian Legislature, of removing the limit to the number of Counsellors whom the Governor-General may appoint, of placing the administration of all Departments of the Central Government under the Governor-General's exclusive control, and of suspending the operation of provisions relating to the Council of Ministers. Broadly stated, the effect of these transitory provisions will be that the Executive of the Central Government, though necessarily deprived of much of its present range of authority in the Provinces, would for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act."

These proposals proved to be perhaps the weakest part of the Government scheme. The examination of Sir Samuel Hoare on this point in the Joint Select Committee showed the essential defects of this method. Their proposal that, during the interim period the administration of all departments of the Central Government should be under the Governor-General's exclusive control and should be treated as Reserved departments for the time being, was startling, as it deprived the Central Legislature of its powers over supply, and converted the entire budget of the Government into a non-votable item throughout the interim period.

Omissions from the White Paper.—The Government seem to have completely overlooked the fact that the introduction of provincial autonomy will involve consequential changes in the powers not merely of the Provincial and Central Legislature but also of

their Executive. These changes differ only slightly from the modifications which will be introduced by the establishment of Federation. Again, they seem to have completely forgotten the existence of Federalism, nor were they mindful of the fact that the introduction of provincial autonomy will necessitate distribution of legislative powers during the transitory period which will be identical with that envisaged in the Federation. In the financial spheres also the same principles apply. Again, there would be the same distribution of financial powers and resources as would be established under the Federation. Moreover, the Federal Court must be brought into being immediately after the introduction of complete autonomy in the Provinces, as even during the interim period many constitutional cases may crop up, which can only be decided by that Court. The relations of the Governor-General to Governors will also undergo substantial modification. The Governor-General must have personal control over the Governors in the exercise of their special responsibilities, and the Governor-General in his discretion must be empowered to issue mandatory directions through the Governors to the Provinces. Again, the settlement of inter-provincial disputes, or disputes between the Centre and a Province, necessitate specific provisions during this period. The White Paper proposals seem to have ignored the far-reaching effect which the introduction of provincial autonomy will produce in almost every sphere of Central Government. However, the Act removes many of the objections which were urged to proposal 202 of the White Paper, and its transitory provisions are comprehensive and remove the objections detailed above.

How the Administration will be carried on during the Transitional Period.—The provisions to this end will be applied in the period between the introduction of provincial autonomy and the establishment of the Federation. Section 313 defines the powers of the Executive Government. They will be exercised on behalf of His Majesty by the Governor-General in Council, either directly or through officers subordinate to him, but nothing in the section is to prevent the Indian Legislature from conferring functions on subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law, on any Court, Judge or officer, or on any local or other

Authority. The Executive Authority extends (a) to matters with respect to which the Indian Legislature has, under the said provisions, power to make laws; (b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and the governance of His Majesty's Forces borne on the Indian establishment; (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise, and in relation to the tribal areas. The rights granted to Provinces are safeguarded by the proviso which lays down that "The said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws". Nor does it extend to enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto. Commissions in any such forces shall be granted by His Majesty, unless he delegates that power by virtue of Part I of the Act or otherwise.

References in the provisions of the Act for the time being in force to the Governor-General and Federal Government shall, except as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references to the Governor-General in Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require. Provided that any reference to the revenues of the Federation shall be construed as a reference to the revenues of the Governor-General in Council. The revenues of the Governor-General in Council shall, subject to the provision of Chapter I of Part III of the Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and to the provisions of the Act with respect to the Federal Railway Authority (so far as any such provisions are for the time being in force), include all revenues or moneys raised or received either by the Governor-General in Council, or by the Governor-General. The expenses of the Governor-General in discharging his functions as respects matters with respect to which he is required by

the provisions of the Act for the time being in force to act in his discretion shall be defrayed out of the revenues of the Governor-General in Council. This subsection makes effective provision for financial and administrative rearrangements during the transition period and is an immense improvement on the vague proposals of the White Paper. The power vested in the Governor-General of acting in his discretion in respect of his special responsibilities will be exercised by him immediately after the introduction of provincial autonomy.

By this means, coordination will be maintained between the Central Government and the autonomous Provinces. The Governor-General will issue mandatory instructions in the sphere of his special responsibilities. The financial arrangements are simpler. The Central Government will presumably collect any such duties as it is empowered to collect, and assign them to the Provinces. This will not make any substantial change in the budget of the Central Government, for after assigning the proceeds of duties specified in these sections the balance of the revenue will remain with the latter. Even during the transition period the items of expenditure incurred by the Governor-General in discharging his functions in respect of which he is required to act in his discretion will be separated from other items and will be defrayed out of the revenues of the Governor-General in Council.

Subsection (4) of section 313 states that any requirement in the Act that the Governor-General shall exercise his individual judgment with respect to any matters shall not come into force until the establishment of the Federation, but notwithstanding that Part II of the Act (dealing with the establishment of the Federation) has not come into operation, the following provisions of the Act, that is to say: (a) the provisions requiring the prior sanction of the Governor-General for certain legislative proposals; (b) the provisions relating to broadcasting; (c) the provisions relating to directions to and the principles to be observed by, the Federal Railway Authority; and (d) provisions relating to Civil services to be recruited by Secretary of State, shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas, as they have effect in relation to matters or functions with respect to, or in the exercise of, which the Governor-General is required to act in his discretion and any reference to the special responsibilities

of the Governor-General shall be construed as a reference to the special responsibilities which he will have when Part II of the Act comes into operation. Nothing in the section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of functions of the Crown in its relations with the States. In other words, the Political Department will come under the direct administration of the Viceroy immediately after the introduction of provincial autonomy.

The relation of the Governor-General in Council to the Secretary of State during the interim period is defined by section 314. The Governor-General in Council and the Governor-General, both as respects matters in which he is required by or under the Act to act in his discretion and as respects other matters, shall be under the control of and comply with such particular directions, if any, as may from time to time be issued by the Secretary of State, but the validity of anything done by the Governor-General in Council or the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of the subsection. This practically maintains the existing powers of the Secretary of State, though a safeguard is provided, on the analogy of the Act of 1919, to the effect that no direction will be given by the Secretary of State with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers. The number of the Secretary of State's advisers during this period shall not be more than twelve nor less than eight, and on the establishment of Federation such advisers as the Secretary of State may direct shall cease to hold office.

The Governor-General in Council is not to contract any sterling loans during this period, but the Secretary of State may do so on his behalf, if provision is made in that behalf by an East India Loans Act of Parliament. Such powers shall not be exercised by the Secretary of State without the concurrence of the majority of his advisers present at the meeting. The powers of the Indian Legislature during the transition period are defined by section 316, which lays down that the powers conferred by the provisions of the Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature, and accordingly references in those provisions to the Federal Legislature and Federal

laws shall be construed as references to the Indian Legislature and laws relating to the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by the laws of the Indian Legislature: provided that nothing in the section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money. Provision is made for the establishment of the Federal Court, Federal Public Service Commission and Federal Railway Authority before the inauguration of the Federation, and they will perform "in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established". They may be established after the introduction of provincial autonomy. Any rights acquired or liabilities incurred by the Governor-General in Council or the Governor-General in the interim period will be rights and liabilities of the Federation, and legal proceedings pending at the establishment of the Federation shall, after the establishment of Federation, be continued by or against the Federation.

Excluded Areas

The question of excluded areas, or backward tracts, assumed considerable importance during the sittings of the Joint Select Committee. Under the Act of 1919, they covered an area of 207,900 square miles, and contained a population of about thirteen millions. They were to be found in six Provinces. There were none in the United Provinces, Bombay or Central Provinces. These areas were declared backward tracts by notification made under section 52 (2) of the Government of India Act of 1919. Before the Montagu-Chelmsford Reforms they were generally subject to special laws, which prescribe simple forms of judicial and administrative procedure. Almost all the tracts were "scheduled districts" under the India Act XIV of 1874. A notification made under sections 5 and 5A of that Act enabled any enactment in force in any part of British India to be extended by executive order to a "scheduled district" with such restrictions and modifications as seemed fit. The Act of 1919 vested the Executive with absolute discretion in the extension of Provincial and Central statutes to such areas. The views of the Government of India were embodied in the

Ninth Despatch on the Constitutional Reforms; the Government aimed at restricting and limiting exclusion as much as possible, and made various recommendations suggesting varying degrees of exclusion to different tracts. The proposals of the Montagu-Chelmsford Report that typically backward areas should be administered by the Government was not carried out except in the special instance of the Shan States of Burma.

History of these Areas.—The Government of India classified certain areas as wholly backward tracts, and others as partially backward, and notifications issued by the Governor-General in Council under section 52A (2) of the Act of 1919 prescribed that neither the Central nor the Provincial Legislature should have power to make laws applicable to these "tracts", but the Governor-General in Council might direct that any Act of the Provincial Legislature should apply to that tract, subject to such exceptions as he thought fit. Proposals for expenditure in the tract need not be submitted to the vote of the Legislative Assembly or a Provincial Legislature. No question could be asked about the tract and no subject relating to it might be discussed in the Legislative Assembly or (except with the Governor's permission) in the Provincial Legislature. In the case of partially backward tracts the Reserved half of the Government was given full discretion in applying, or refusing to apply, new Provincial enactments. These tracts were:

In Madras . .	The Agency Tracts
In Bengal . .	Darjeeling
In the Punjab . .	Lahaul
In Behar and Orissa .	Chota Nagpur, the Santal Parganas and Sambalpur
In Assam . .	All the backward tracts of the Province

Ministers were given power in certain tracts in Assam, Chota Nagpur, the Santal Parganas and Sambalpur. In the other tracts all Provincial subjects were Reserved subjects. All the backward tracts which were not wholly excluded (except Darjeeling and Lahaul) were represented in the Legislatures of their Provinces, though it must be confessed that their representation was wholly inadequate and ineffective.

The Local Governments in their remarks on the recommenda-

tion of the Simon Commission regarding these tracts did not favour the extension of these areas beyond the necessary limits. It seemed as if the question had receded into the background and no special measures were necessary for the expansion and preservation of these areas. Organised Indian opinion has aimed at ameliorating the social condition of these primitive or semi-primitive people in order that they may ultimately become active participants in the public life of the country on a footing of complete equality with other sections of the Indian population. The process of assimilation by these backward tribes has been much more rapid than many persons suppose. This is due to a very large extent to the heroic self-sacrifice of a band of philanthropists whose work among these tribes has won unstinted support from all classes. A movement for their amelioration was initiated by Wing-Commander James and Dr. Hutton, who gave evidence before a Sub-committee of the Joint Select Committee. It aimed at extending the areas of such classes as well as creating opportunities for their social development. In their memorandum and evidence before the Sub-committee of the Joint Select Committee they put forward claims on behalf of the inhabitants of these areas which could hardly be reconciled with the opinions of the Local Governments or with the definite and clear programme of the vast majority of the Indians. Reference may be made here to their evidence before the Sub-committee of the Joint Select Committee, and their cross-examination.

The Joint Select Committee was, however, sympathetic, and a very interesting debate took place in the House of Commons in which the anthropologists, led by Major Cadogan and Wing-Commander James, opposed the proposals of the Government embodied in the Bill. The Joint Select Committee had made a definite proposal in paragraph 144 that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared an excluded area or partially excluded area. In relation to the former, the Governor will himself direct and control the administration; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the area, except under the direction of the Governor given in his discretion, with such exceptions or modifications as he may think fit. The Governor will also be empowered at his discretion to make regulations having the force of law for the

peace and good government of any excluded or partially excluded area, but subject in this case to the prior assent of the Governor-General. These recommendations have been embodied in sections 91 and 92 of the Constitution Act. Federal and Provincial statutes will not apply to excluded or partially excluded areas unless the Governor by public notification so directs, and such notification may restrict the scope of such laws with reference to such areas. The Governor may also make regulations for the peace and good government of such areas, and such regulations may repeal or amend any Indian statute. These regulations shall be submitted to the Governor-General, and until assented to by the Governor-General in his discretion shall have no effect. The Governor shall act in his discretion with reference to excluded areas. Under the Constitution Act, Parliament assumes responsibility for these areas, and the fixation of areas as Excluded and Partially Excluded respectively has been determined by an Order in Council, which was approved in draft by both the Houses of Parliament and is dated March 3, 1936. The constitutional arrangement has thus been radically altered, as instead of the present Reserved half of the Government administering these areas, the Governor alone will be responsible for them. The Governor will be responsible to the Governor-General, who will be responsible to the Secretary of State for their administration. The expenses to be incurred in their administration will not be voted by the Provincial Legislatures.

Substantial Extension of the Areas.—The debate in the House of Commons produced one of the most brilliant speeches by Mr. Winston Churchill, in which he taunted the anthropologists with tame submission to the Government's desire for a compromise on the vexed question of the extent of the areas. The anthropologists demanded the whole loaf; the Government were prepared to give only a slice. Mr. Churchill, in one of his most histrionic outbursts, blurted out, with pawky humour, that so far as he, Mr. Winston Churchill, was concerned he would have no objection if the whole of India was treated as an Excluded Area. The sight of this vast continent being parcelled out among benevolent Governors, with dictatorial powers, and treated as distinct blocks of Excluded Areas, would be highly diverting. The anthropologists, who had the courage and energy of philanthropists and social reformers, agreed to a compromise whereby the Government was

to announce its decision after investigating the subject by an Order in Council. Consequently, the Government of India made a fresh investigation. Its views and those of the local Governments were presented to Parliament in January 1936 (Excluded and Partially Excluded Areas. Cmd. 5064, 4s. 6d.) The Secretary of State had sent instructions to the Government of India, stating that a *prima facie* case existed for special treatment in the areas where the aboriginal population is in a majority. These instructions meant the addition of substantially large tracts to such areas. The Order in Council has added large tracts which had hitherto been excluded from such areas. A comparison of the new areas with those demarcated in 1919 will bring out the increase effected by the changes. Only 4 excluded and 11 partially excluded areas were proposed in the Bill. These have been increased to 8 and 28 respectively. The local Governments were opposed to this policy. The Madras Government strongly protested against extending the principle of exclusion, while the Bombay Government pointed out that the progress made by the aborigines has been due to their association with the advanced sections of the community and there was no reason to think that popular Ministers and Legislatures would be less solicitous of their welfare than the Governors. Another curious effect of misguided philanthropy and excessive zeal may be pointed out here. Inhabitants of certain areas had raised themselves to such an extent that they were hardly distinguishable from the non-excluded areas. Some had been elected to local bodies and were taking an active part in municipal administration. The conversion of such areas into excluded areas would throw them back into the primitive condition from which they had emerged after praiseworthy efforts. Such areas ought not to be regarded as interesting subjects for anthropological research and suitable exhibits for a museum of antiquities. Will the grandmotherly treatment specially devised for them during this, their present stage of cultural infancy, brace them on for renewed activity, or emasculate their faculties and keep them tied to the apron-strings of the Government? The probability is that they will be too feeble to stand on their feet.

CHAPTER IX

FUNDAMENTAL RIGHTS; CONSTITUENT POWERS

FUNDAMENTAL RIGHTS

No subject aroused greater interest in India in 1928 than that of scheduling Fundamental Rights. It captivated the imagination of minorities; it evoked the enthusiasm of the moderates and ideologues, and effected a strange union of men with different outlook and programmes in bonds of common sentiment and ideals. The Muslim community found in it a panacea for all its ills and made it an integral part of its fundamental resolution.

The Nehru Committee took it up, and suggested "fundamental safeguards" on the lines of the post-war Constitutions of Poland, Esthonia, Czechoslovakia, Latvia and other States of Europe. The principle of fundamental safeguards was enthusiastically supported by all the political organisations in India, and became a vital part of Indian political programmes, while the minorities regarded it as the sheet-anchor of their political existence. The first authoritative body to reject the idea was the Simon Commission. Sir John Simon, as a lawyer of great political ability and with an intellect like a razor blade, riddled the scheme of fundamental safeguards with incisive arguments and bluntly declared that such could not be enforced by any Court. The First Round Table Conference, under Mr. Macdonald's guidance, was sympathetic, and the resolution of its Minorities Committee inspired hope among its enthusiastic votaries. The Minorities Committee of the First Round Table Conference, in Paragraph III, stated that "one of the chief proposals brought before the Sub-committee was the inclusion in the Constitution of a declaration of fundamental rights, safeguarding the cultural and religious life of the various communities and securing to every individual, without discrimination as to race, creed, caste or sex, the free exercise of economic, social and civil rights".

Idealists and Fundamental Rights.—This was regarded as a great achievement by the idealists, and a rich list of such rights was considered in the Viceroy's Consultative Committee in 1932, when a large number of rights, of all colours and stripes, was accepted. An enormous number awaited disposal when the Committee was dissolved. The series of fundamental rights which poured into the India Office must have formed the subject of many a caustic comment to the lynx-eyed, hard-boiled, practical administrators, but the final battle of this campaign was fought out in the Third Round Table Conference. The champions of such rights came out of this conflict battered and bleeding, with a vague formula in mutilated form. They also secured an assurance that "it may be found convenient for His Majesty to make a pronouncement, on the eve of the inauguration of the Constitution, regarding some of the propositions suggested to the Government which might prove unsuitable for statutory enactment" (White Paper). The Joint Select Committee adopted a more summary method, and its inquest was conducted with the realism and directness of confirmed parliamentarians. They refused to touch this exotic, of which the English Parliament had never heard, and applied their knowledge of post-war Europe to expose the futility and inanity of such rights in the new States of Europe. They thought that His Majesty might think fit to make references to them in any proclamation that he may issue on the inauguration of the Constitution. They agreed with the observations of Sir John Simon, and declared that a cynic might find plausible arguments in the history of more than one country during the last ten years for asserting that the most effective method of ensuring the destruction of a fundamental right is to include a declaration of its existence in a constitutional document. "They will either embarrass the Legislature or be of such an abstruse nature as to be useless for all practical purposes." Thus an issue on which the hopes and aspirations of vast numbers had been centred was disposed of. The writer was one of those who took up this question, and fought it for nearly seven years since 1928; but the settlement of the controversy leaves its champions no other alternative but to abide by the decision of the Joint Select Committee.

Third Round Table Conference and Fundamental Rights.—In the Third Round Table Conference the difficulties of enforcing the

fundamental rights were generally felt, and there was substantial support for the view that, as a means of securing fair treatment for the majority and minorities alike, the course of wisdom will be to rely, in so far as reliance cannot be placed upon mutual goodwill and trust, on the "special responsibilities" with which, it was suggested, the Governor-General and the Governors should be endowed in their respective spheres to protect the rights of minorities (Report of the Third Round Table Conference).

The chief objection to this proposal is that the enforcement of fundamental rights will depend entirely upon the sweet will of the Governor-General or the Governor. As they are not specified in the statute, it will be extremely difficult for a Governor or Governor-General to decide whether, on any matter round which a furious agitation has gathered, he will be justified in taking action in discharge of his special responsibility. If a minority community in the legitimate exercise of its rights disturbs "the peace and tranquillity" by offering *satyagraha* against a particular evil, the Governor-General or the Governor, as the case may be, will be on the horns of a dilemma. His responsibility for protection of the legitimate interests of the minorities is unambiguously laid down in the Constitution. If, however, he carries out his duty, it may disturb the peace and tranquillity of a Province, which is another of his special responsibilities. What should he do in the circumstances? The Government proposed that certain provisions guaranteeing personal safety, the right of private property and eligibility for public office regardless of difference of caste, religion, etc., can appropriately and should find a place in the Constitution Act. As it would have been anomalous if such a declaration had been enforced in British India alone, and Indian States were determined opponents of such rights for their subjects, the proposal for insertion in the Constitution Act was decisively rejected by the Joint Select Committee.

Rights set out in the Act.—The new Act, however, has saved a few legal maxims from the wreckage, and they are enshrined in sections 298 and 299. Section 298, expanding a provision as to public office first laid down a century ago, provides that "no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such

grounds from acquiring, holding or disposing of property, or carrying on any occupation, trade, business or profession in British India". As the wording of this subsection would have infringed the provisions of the Punjab Land Alienation Act, subsection (2) safeguards the latter by declaring that "nothing in the section shall affect the operation of any law which (a) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class; or (b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law".

Nothing in the section is to be construed as derogating from the special responsibility of the Governor-General or a Governor for safeguarding of the legitimate interest of minorities. As subsection (2) may lead to the denial to the minority of the right of appeal to the Federal Court for redress, the Joint Select Committee suggested that, in cases where the legitimate interests of minorities may be adversely affected and access to the Courts is barred by this proviso in the Constitution, the Governor should consider whether his special responsibility for the protection of minorities necessitates action on his part.

Protection of Rights of Property.—The next section deals with a point on which the landholders of India were greatly exercised a few years ago. The representatives of Indian landholders who waited upon the Joint Select Committee in 1933 emphasised the need for a safeguard against expropriation of property. The Indian landholders have been a stabilising element in modern society, and though they have often been exceedingly slow in adapting themselves to changed conditions, they have encouraged art, fostered culture, developed the resources of the land and in other ways maintained the traditions of their ancestors. The gallant peasant proprietors of the Punjab, the virile peasants and landowners of the United Provinces and the hardy cultivators of Maharashtra include some of the finest material in the country. They were genuinely apprehensive of the effects of a radical change in the system of land tenure. As the no-rent campaign had

been preached in some districts of United Provinces in 1920–21 and again in 1931, they felt that some safeguards ought to be inserted in the Constitution against expropriation of property. It will be easy to show that some were unnecessarily alarmed over the dangers to which they thought they were exposed, but it must be confessed that the utterances of some leaders were disturbing for stake-holders. Nobody can doubt that they were genuinely alarmed. Many persons were agreed that a provision was needed to allay the anxiety of an influential class in the land, by safeguarding their proprietary rights. Such rights include grants of land or tenure of land free of land revenue or subject to partial revision of land revenue held under various names (of which *taluq*, *inam*, *watan*, and *jagir* are examples) throughout British India by various individuals and classes of individuals. Another class which was apprehensive of its position in the new Constitution was zemindars, who held land on the system of permanent settlement. The Act does not go so far as these classes had wished, but it does tend to allay their anxiety. It prevents compulsory acquisition of land without compensation. The *jagir* and other lands are protected by section 299. It declares that no Bill which makes provision for the transference to public ownership of any land, etc., shall be moved in any Chamber of the Federal or Provincial Legislatures without the previous consent of the Governor-General or Governor in his discretion. The zemindars who hold land under the permanent settlement of tenure are protected by paragraph 18 (c) of the draft Instruments of Instruction to the Governor, which lays down that the Governor shall not assent to, but shall reserve for the consideration of the Governor-General, "any Bill which would alter the character of the permanent settlement". It is provided by section 299 that:

"(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land or any commercial or industrial undertakings, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either

fixes the amount of the compensation or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the sanction of the Governor-General in his discretion, or in a Chamber of Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provision of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking".

Section 300 gives further protection. It provides that the exclusive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of, or to, land, or to any right or privilege in respect of land or land revenue, being a grant or confirmation made before January 1, 1870, or made on or after that date for services rendered. No pension granted or customarily payable before the introduction of provincial autonomy on political considerations or compassionate grounds shall be discontinued or reduced otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General in the exercise of his individual judgment, or, as the case may be, the Governor in the exercise of his individual judgment.

Free Trade between Provinces.—A few other provisions of a general nature may be summarised here. The Act carries out, in section 297, the recommendation of the First Peel Committee on Federal Finance and prohibits restrictions on the entry of commodities of one Province into another, and establishes freedom of trade among British Indian units. It does not apply to federated States, as the latter refused to part with their internal customs duties. Section 294 lays down that the jurisdiction of the Crown

in military lines such as Quetta, Secunderabad and Bangalore will remain unaffected. Should the Crown relinquish that jurisdiction it will be replaced by supplementary Instruments of Accession in which the changed relationship will be specified. In the case of railway lands the jurisdiction of the Crown will cease if corresponding powers are assumed by Federal authorities.

Procedure regarding Orders in Council.—Any power conferred by the Act on His Majesty in Council is to be exercisable only by Order in Council, and the Secretary of State, save as hereinafter provided, shall lay before Parliament the draft of any order which it is proposed to recommend to His Majesty to make in Council under any provision of the Act, and no further proceeding will be taken in relation thereto unless both the Houses of Parliament present an address praying that the order be made in the form of the draft, or such amendments as may have been agreed to by resolutions of both the Houses. During the dissolution or prorogation of Parliament, the Secretary of State may promulgate an Order in Council but it shall cease to have effect twenty-eight days after the meeting of the House of Commons unless both Houses approve of it before that date. A subsequent order may revoke any order previously made. An Order in Council may direct that the new Act as well as the Government of India Act of 1919 shall have effect, subject to such modifications as may be specified. The order may, during the transition period, make temporary provision to place at the disposal of the Governments in India sufficient revenues to enable the business of those Governments to be carried on, and such other provisions for removing difficulties specified in the order. No Order in Council under this section will be made until the expiration of six months from the establishment of the Federation, and six months from the commencement of provincial autonomy. These sections, 309 and 310, are very comprehensive and vest the Government with sufficient power to tide over the interim period.

A transitional provision of the Act lays down that for purposes of the first election to the Provincial and Federal Legislatures, non-official members of the Executive Council of the Governor-General or Governor, Ministers of Provinces, and persons holding office which is not a whole-time office remunerated either by salary or by fees, shall be qualified to stand for membership of these

bodies (section 307). This section modifies, to a certain extent, section 69 (1) (a).

Constituent Powers

The Government of India Act of 1919 did not provide any effective machinery for changes in the Constitution. There was a lack of elasticity and over-insistence of rigidity which struck the Simon Commission. It is true that under section 19A the Secretary of State could restrict the exercise of powers of superintendence, direction and control vested in him and the Secretary of State in Council, and some of the Reserved subjects could be transferred and placed in charge of Ministers. By this means the diarchical system could be gradually transformed in spirit and its contours softened. But section 19A of the Government of India Act of 1919 did not, and could not, permit complete abolition of diarchy by this back door. An amendment of the Act by Parliament would have been necessary for the purpose, and the rigidity of the Act precluded all possibility of development and growth. The Simon Commission suggested that Provincial Legislatures should be given the right, on the expiry of ten years, to effect (a) changes in the number, distribution or boundaries of constituencies, or in the number of members returned by them; (b) changes in the franchise; or (c) changes in the method of representation of particular communities.

They guarded themselves against possible violation of minority rights by laying down that resolutions of the Legislature which are calculated to prejudice the right of any community in respect of its existing communal or separate representation would be imperative. Such resolutions must be supported by two-third votes of the Legislature and by two-third votes of members representing the community affected.

The Third Round Table Conference devoted considerable attention to this subject, and representatives of various interests and communities submitted their views. It was perfectly clear that the Indian Legislatures could not be vested with the power to alter their Constitution in exactly the same way as the Australian Legislature. They could only amend it within certain limits. Beyond these they could not go. Discussions in the Third Round Table Conference disclosed a unanimous recognition of the fact

that it would be impossible to contemplate a devolution to Indian Legislatures by provisions in the Constitution Act of any general power to alter that Act in material particulars. The Conference agreed that the Indian Legislature should be given power to alter the franchise and composition of Legislatures, Provincial and Federal, though further discussions had produced a divergence of opinions regarding the subjects which Indian Legislatures would be competent to alter. The Government were prepared to frame proposals on the constituent power of Indian Legislatures. The proposal made by the Simon Commission regarding change in the method of representation was based on a sound conception of the Indian situation.

Joint Select Committee and Changes in the Constitution.—The Joint Select Committee, in considering the problem, pointed out that, in specifying matters which might in principle be left appropriately to modification by the Central or Provincial Legislatures, it would be necessary not merely to decide what matters could thus be dealt with, but also to devise arrangements to ensure that the various interests affected by any proposed modification were given full opportunity to express their views, and that changes which they regarded as prejudicial to themselves would not be forced upon them by an inconsiderate majority. This was a brilliant exposition of a principle which had been very clearly and forcibly stated in the Third Round Table Conference. But the Committee seem to have lost sight of these considerations in paragraph 381 of their Report.

In their proposals for resolutions to be passed by the Indian Legislatures for constitutional amendments, they suggested that, "as a guide to His Majesty's Government and Parliament in this matter, the Governor-General or Governor, as the case may be, should be required, in forwarding a resolution, to state his own views on the question of its effect upon the interests of any minority or minorities". The suggestion was inadequate and insufficient, as Indian Legislatures might pass a resolution modifying the Communal Award, and all that the Governor or the Governor-General was required to do under their proposals was to forward the views of any minority affected thereby. The position taken up by the Joint Select Committee as well as by the Government in the Bill could hardly be reconciled with the clear, unequivocal

and definite undertaking of His Majesty's Government in 1932 that the Communal Award could not be altered save with the consent of the communities affected thereby. Clause 285, which embodied the suggestion of the Joint Select Committee, was subjected to severe criticism by the Muslim community, as it did not safeguard the position which had been assigned to it by the Communal Award. Meetings of protest were held in various parts of India. The Duchess of Atholl and Mr. Isaac Foot also gave expression to the apprehensions and the anxiety of the minority communities in the House of Commons. The matter was taken up in the House of Lords, and an amendment was moved by Lord Linlithgow, now the Viceroy, as a compromise. Lord Linlithgow's tact, statesmanship and ability extricated the Government from a very awkward situation, and section 308 embodies a compromise to which all the minorities in India accorded a warm approval. His Lordship's skilful handling of the Joint Select Committee and the part he played in piloting the Bill in the House of Lords, won the admiration of all who had the opportunity of following his speeches.

Section 308 analysed: how far it safeguards "Communal Award". —Section 308 lays down that proposals for the amendment of provisions in the Constitution in the Federal or Provincial Legislatures must be made on motions proposed in each Chamber by a Minister on behalf of the Council of Ministers, and, if the resolution is passed, the Governor-General or the Governor, as the case may be, may be addressed to submit to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament. The Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which he proposes to take thereon. The amendments referred to (subsection 2) are:

"(a) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the

number of seats allotted to British India and the number of seats allotted to Indian States;

(b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature;

(c) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf; and

(d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections."

So far as regards any such amendment as is mentioned in paragraph (c) of subsection (2), the provisions of subsection (1) shall apply to a resolution of the Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and, in the case of a resolution of a Provincial Legislature, from the commencement of Part III of the Act. His Majesty in Council may at any time after such commencement, whether the ten years referred to as above have elapsed or not, and whether an address to this effect has been submitted to His Majesty or not, make in the provisions of the Act any such amendment as is referred to in subsection (2) of the section. But if no address to this effect has been submitted to His Majesty, then, before the draft of any order which the Secretary of State proposes to submit to His Majesty is laid before Parliament, he shall, unless the proposed amendment is of a drafting or minor nature, ascertain the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal, or, as the case may be, the Provincial Legislature support the proposal: (2) the provisions of Part II of the First

Schedule to the Act (Representatives of Indian State in the Federal Legislature) are not to be amended without the consent of the ruler of any State which will be affected by the amendment.

Section 294 deals with foreign jurisdiction, and defines the extent to which powers exercised up to the date of the passing of the Act by the Crown in States will continue to be exercised under the new Constitution. In spite of powerful and influential representations, backed by some States who advocated retrocession, the jurisdiction of the Crown in military zones such as Quetta, Secunderabad and Bangalore will remain unaltered, but if the Crown wishes at any time to relinquish it, a supplementary Instrument of Accession to that end may be negotiated. In the case of railway lands, the jurisdiction of the Crown will cease in so far as corresponding and co-existing powers are assumed by Federal authorities. A minimum period of five years is prescribed for the continuance of British legislation in force in the States at the time of the passing of the Act under the provision of the Foreign Jurisdiction Act, 1890, or otherwise.

Section 295 confers on the Governor-General the powers of suspension, remission or commutation of death sentence which were exercised by the Governor-General in Council before the commencement of Part III of the Act. Under section 296 no member of a Provincial or Federal Legislature can be a member of any tribunal in India having jurisdiction to entertain appeals or revise decisions in revenue cases.

CHAPTER X

COMPOSITION AND FRANCHISE OF INDIAN LEGISLATURES: THE HOUSE OF COMMONS DEBATES

THE franchise qualifications for the Federal and Provincial Legislatures are dealt with in the Sixth Schedule to the Act, contains elaborate provisions and occupies fifty-five pages. The First and the Fifth Schedules deal with the composition of the Federal and Provincial Legislatures respectively, while the Orders in Council dated April 30, 1936 (Provincial Legislative Councils) and (Provincial Legislative Assemblies) embody the recommendations of the Hammond Committee on Delimitation of Constituencies and other matters. Only a sketch of the general franchise qualifications for, and salient features of, the composition of Provincial and Federal Assemblies can be given here.

Composition of Indian Legislatures.—The qualifications for representatives of British India are different from those specified for representatives of Indian States. Moreover, the election of members from British India to the Lower House will be indirect, and the Upper House, direct. This is the result of the compromise arrived at in the House of Lords between the active supporters of direct election and its opponents.

The general qualifications for membership of the Federal Assembly from British India are as follows: under the First Schedule no person is qualified to be chosen as a representative for British India to fill a seat in the Federal Legislature unless he:

(a) is a British subject, or the ruler or a subject of an Indian State which has acceded to the Federation; and

(b) is, in the case of a seat in the Council of State, not less than thirty years of age, and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age; and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this part of the schedule as may be appropriate in his case:

Provided that the ruler or a subject of an Indian State which has not acceded to the Federation—

(1) shall not be disqualified under sub-paragraph (a) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province; and

(2) in such cases as may be prescribed, shall not be disqualified under the said sub-paragraph (a) to fill a seat allocated to a Chief Commissioner's Province.

Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

For the Council of State the representatives of British India are to be divided into territorial constituencies and no person shall be entitled to vote at an election unless his name is entered on the electoral roll for the Council of State. For all Legislatures throughout British India, separate electorates are provided for specified communities. The proportion of seats for each community in the Legislatures was fixed by the Communal Award published in 1932. Hence the Anglo-Indian, European, Muslim, Sikh, Hindu, Indian Christian communities will vote for representatives of their respective communities. The electoral rolls are consequently based on communities.

No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat which may conveniently be termed a Hindu seat in the Council of State. Persons to fill seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of electoral colleges consisting of such Anglo-Indians, Europeans and Indian Christians as the case may be, as are members of the Legislative Council of any Governor's Province, or of the Legislative Assembly of any Governor's Province. The rules regulating the conduct of elections by the European electoral college shall be such as to secure that on any occasion where more than one seat falls to be filled by the college, no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province. This provision guarantees separate electorate to Sikhs, Muslims, Anglo-Indians, Europeans and Indian Christians. The

residue is "general" seats, which are consequently mainly reserved for Hindus—both caste Hindus and scheduled castes.

Difficulties in the Allocation of Seats.—The allocation of seats in the Council of States was complicated by several factors.

In the first place, the States demanded weightage in both Houses of the Federal Legislature. The British representatives were inclined to concede a certain amount of weightage to States in the Upper Chamber. As regards the Lower House they suggested that seats could be assigned strictly on the basis of population. This would have given to States only 24 per cent representation in the Lower Chamber. The discussion was resumed in the second Round Table Conference, and several delegates from British India objected to the recommendation of the third Report of the Federal Structure Committee, in which the allotment of seats to the States was fixed at 40 per cent in the Upper Chamber, and 33⅓ per cent in the Lower, as they were opposed "to the principle of weightage to representation in the States in excess of their population strength".

Opinion varied regarding the size of the Federal Legislature. Some members actually proposed a Lower Chamber of 700 members and an Upper Chamber of 500 members. Such an unwieldy Legislature would have been unbusinesslike and expensive, would have seriously affected parliamentary procedure, and the quality of members would have deteriorated. A suggestion was made by one State that there should be a unicameral Legislature of, say, one hundred members. It was contended that the work which the Federal Legislature will be called upon to do would be comparatively unimportant, as the bulk of important subjects would be transferred to the Provinces, and a small unicameral Legislature would suffice. Closer examination of the proposal revealed the difficulty of establishing such a small body in a vast sub-continent of 330 millions. The Federal Structure Committee fixed the number of the Houses at 300 and 200 for the Lower and Upper Chambers of the Federal Legislature respectively. The reader is referred to the Fifth Schedule for the composition of Provincial Legislatures. Under the Act the Council of State will consist of not more than 260 members, of whom 150 will be representatives of British India, not more than 100 will be appointed by rulers of federated States and not more than 10 will be nominated by the Governor-

General in his discretion. The Governor-General's Counsellors are not included in these figures. The Lower Legislature will consist of not more than 375 members, of whom 250 will be representatives of British India and not more than 125 will be appointed by the rulers of federated States. A small Federal Legislature would undoubtedly have been more efficient, but to those who have participated in the numerous discussions that have taken place on the subject in India and England since the publication of the Nehru Report and the Report of the Simon Commission it was clear that the size of the Federal Legislature must be determined by the peculiar conditions of India no less than by the special features of Indian Federation. The latter contains two classes of units: Indian States and British India; and British Indian units include a substantial proportion of powerful and influential minorities and interests who insisted on adequate and effective representation in both Houses. The difficulty inherent in the distribution of the residue of seats among 125 large and small States, with a bewildering variety of petty States, was infinitely greater, as there was, and is, considerable jealousy and suspicion among rulers of these States. A small Federal Legislature would have meant ineffective representation not merely of minorities in British India, but also of numerous small States. The Indian Constitution is a veritable jig-saw puzzle which many have attempted to fit together. The difficulties experienced by Indian delegates in planning the Federal and Provincial Legislatures bring out this fact clearly enough. Numerous claims, interests and communities had to be reconciled, and no mystic figure could be unalterably fixed beforehand.

The third important factor which tended to complicate these discussions was the claims put forward by various British Indian Provinces for adequate representations in the Legislature. Old claims which had fallen into desuetude since 1919 were revived. New claims were put forward, and each Province had its champions. Acting on a well-known principle of all Federal Constitutions, some delegates attempted reasonable approximation to equality of representation for each British Indian unit in the Upper Chamber. They admitted that the absolute equality which prevails in the United States Senate was impossible in India, and a number of essential factors had to be taken into account. Obviously

Provinces which exceed, say, twenty millions in population must be treated differently from smaller Provinces such as Central Provinces, Assam, Sind and Orissa. There were two divisions into which Provinces could be divided. All Provinces could not, consequently, be given the same amount of representation in that Chamber. A distinction must be made between major and minor Provinces, and the latter must be content with smaller representation.

In the Lower Chamber an attempt was made to give representation to each Province on the basis of population. Even then it was impossible to apply this principle to important Provinces like Bombay and the Punjab, whose populations are less than half of those of the United Provinces and Bengal. Yet their importance cannot be ignored. Again, special interests, such as European and Indian commerce, had to be provided for. Hence, application of the general principles was substantially modified by the special circumstances of each Province. Another reason that weighed was the actual representation in the Central Legislature of each Province under the Act of 1919. This could not be whittled down, and it was considered advisable to maintain the *status quo* in most cases.

Communal Representation in Legislatures.—The seats allotted to each Province for both Chambers were distributed among different communities and special interests in accordance with the proportions fixed for them. This was a task of great difficulty and skill, but the problem of distribution of the residue of seats among Indian States was much more difficult and delicate. The jealousies —dynastic, economic, political and personal—between different States are as great, in some cases greater, than those between Provinces, and as every State could not be given representation in the Federal Legislature, small States were grouped together so that each group might elect one member to represent all its members in the Federal Legislature. This must have created many difficulties, and all the customary tact and diplomatic skill of the Political Department must have been called forth to smooth over numerous points which had created so much heartburning and jealousy.

The India Bill Debates in the House of Commons.—Mr. Churchill's excursion as a witness before the Joint Select Committee, as shown by the minutes of the Committee, had not strengthened his case, and he did not emerge triumphant from

the ordeal to which he was subjected. The Indian delegates had prepared themselves for the fight with a complete record of his political evolution during the last thirty years and could put several pertinent questions regarding his commitments of various complexion in a chequered political career. In the organised quarrel of politics in the House of Commons he felt completely at home and started his Indian combat in the traditional style. Like a skilful general he chose his own ground for attack, and poured his fire into the ranks of his opponents with deadly skill. He found himself among strange bedfellows at times, as when the Labour Party voted with him on a few occasions. But the combined strength of Labour and Diehard members rarely exceeded one hundred, and the Government legions rarely failed to secure a majority of four to one. On every point which he pressed vigorously Mr. Winston Churchill sustained crushing defeats, but this did not seem to damp his spirits or sour his temper. On the contrary he went on with arrogant abundance, in the spirit of a toreador, with marvellous persistence and vigour, exhibiting a virility of self-confidence which amazed and perplexed his opponents. He has the reckless courage of his forceful personality, and stamps upon his writings and speeches the very form and pressure of himself. His great distinction in politics consists precisely in his resolute self-confidence and steely assurance, in moments when weak and spineless lobbyists are given over to fanciful scruples and empty conventionalisms. His sallies, the mixture of wit and humour which he blended in his most brilliant speeches, the intensity of his convictions, the solemn tones in which he admonished the House of Commons, and the elaborate dithyrambics in which he indulged, produced scenes in the House which are still vividly recalled. He spared few persons, and Sir Samuel Hoare had more than his share of critical attention.

Mr. Churchill and Sir Samuel Hoare.—No two men could present a greater contrast. The one neat and prim, speaking in a manner deliberate and cool, free from the rhetoric and the imagery of his rival's speeches, delivering his sledge-hammer blows with the cold calculation and rich experience of an artist in exposition. His speeches were marked by a complete absence of frills, studious avoidance of emotion and dispassionate analysis of a problem. There was no moulding of sentences or rounding of phrases,

no oratorical development, no gradation of tone. The voice was metallic at times, and as emotions went through the crucible of his intellect they seemed to be solidified. Churchill, on the other hand, flooded you with a torrent of words and mesmerised the assembly by the glow and fervour of his appeal. He would pass from the pathetic to the gay with lightning rapidity, and, using all the arts of a magician, pour elaborate contempt and withering sarcasm on his opponent. His speeches on Provinces and Federation, the way in which he soundly rated the tame anthropologists who had first opposed the Government on excluded areas and then went back to it like truant schoolboys, the severe rebuke he administered to a noble lord for asking a colleague to quote in his speeches the arguments in favour of the proposals which he had attacked in no uncertain terms, the motions of adjournment which he showered in boundless profusion to expose Sir Samuel Hoare or the Princes who, he said, had been bribed to enter the Federation—these are the speeches in which Mr. Churchill showed his resourcefulness of attack.

Mr. Baldwin and Mr. Churchill.—Mr. Baldwin is the most forgiving of men, but even he was once roused into a neat thrust at his refractory follower. The following dialogue between the leader and his follower on February 11, 1935, must have electrified the House of Commons. Mr. Baldwin was forced to state that "I was always under the impression that he [Mr. Churchill] wanted to get rid of the National Government. Then I am told on Sunday that he is perfectly willing to join one". Mr. Churchill seems to have been taken aback by this frontal attack and tried to extricate himself by disclaiming his intention of doing so. "I said", replied Mr. Churchill, "I would stand as a candidate on a Conservative and National footing, but I never suggested for a moment that I was anxious to be included in my right hon. friend's administration." This ought to have disposed of the matter, but Mr. Baldwin now pursued his victim with relentless persistence and blunt directness. "My reading", continued the Prime Minister in cold and deliberate tones, with utmost sangfroid, "was very cursory, but I thought the right hon. gentleman [Mr. Churchill] specified the colleagues he would like to work with." Mr. Churchill now beat a hasty retreat and suggested that Mr. Baldwin was thinking of Mr. Lloyd George. The rejoinder was crushing: "Perhaps we cannot have the one without the other".

Such duels were frequent and amused the lobbies. It must be said to Mr. Churchill's credit that he left Sir Austen Chamberlain severely alone. Only once did he venture to exchange a volley with the elderly statesman. The result was decisive and he never again encountered the veteran.

Mr. Churchill on the Princes' Part in maintaining Stability.—Mr. Churchill attacked the plan of responsibility at the Centre in these words: "What you are giving at the Centre is not responsibility. What you are giving is the power to *extort* responsibility. What you are giving is, by parliamentary methods and by parliamentary arguments (you having conceded all argumentative positions) the power to extort inch by inch, and month by month, the full responsibility. But you are not giving it *now*." He drew a harrowing picture of the condition of Princes in the Federal Assembly. "Anything more lamentable can hardly be conceived. They will be expected to uphold stability, the Conservative point of view, to sustain the Imperial authority, and be as it were behind the Viceroy. What is to be the position of the Princes under this ordeal? Congress [Indian National Congress] are not going to be idle in the new assembly, and any Prince who makes himself prominent in defending Imperial interests and in acting in accordance with the sentiments of loyal allegiance will be a marked man. He will be the subject of a double attack. Agitation will be raised in his dominions behind him, disorders will occur, comments and criticisms will be made and there will be pressure at the Centre, to show how he is a reactionary in neglecting his State, and how much happier they are in the States of those Princes who have conformed to the views of the Congress. I say you will be in a dreadful position. If you imagine that they are going to be an element of stability, I believe that you make a profound mistake. There will be no element of stability there. Once the British power has definitely disinterested itself in this aspect of its affairs in India, the Princes of India have no choice whatever but to throw in their lot with their own fellow-countrymen, and that is what they will do under the remorseless pressure of political events."

The speech did undoubtedly point to dangers which have been forecast by some Indian representatives, and the real reason for the hesitation and equivocation of a few Indian States on the question of entry into the Federation is to be found in the apprehension

and suspicion which the new scheme aroused. Again, it must be admitted that the irresistible pressure of events will make it impossible for Indian Princes to erect a Chinese wall across their borders. The extraordinary rapidity with which India has been linked by modern systems of transport has been a source of surprise and astonishment to persons who have revisited it after ten years. Agitation now spreads with lightning rapidity from British India to Indian States. Under Federation, when representatives of Princes meet leaders of opinion in British India, and organised parties are formed in the Legislatures, the States can no longer remain aloof from the main currents of national policy.

They are of the same blood, religion and race, and have common cultural ideas and national outlook. The entry of the Indian States is bound to facilitate the process of fusion which had been going on steadily during the last seventy-five years. The States have their own rough and ready methods of suppressing agitation within their territory. But these are hardly likely to survive the growth of political organisation and public opinion. Mr. Churchill's foreboding may be dismissed as the irresponsible utterances of a politician, but all impartial students of Indian politics must admit that there is a certain amount of truth in his general argument.

Mr. Churchill's Account of Rulers' Entry into the Federation.—One more example from Mr. Churchill's armoury will suffice. He was dealing with his pet subject, "responsible government at the Centre", and he exposed the Government's scheme to a barrage of destructive criticism. "We are asking the Princes to become, as it were, the champions of British action in the prerogative of the Governor-General and the safeguards. That is a strain to which it is very unfair to expose them in the eyes of their fellow-countrymen. I believe also that you are putting a burden on the Princes which they will not accept, even if they come in. Nothing is more remarkable than the quickness with which solidarity has been established between the Princes and political forces in India. The Secretary of State and the Conservative Party who are going forward on this issue suppose that they are going to have a bulwark and security in the Princes which will counteract the subversive and violent forces which exist in India. I think they will find that they are on a very insecure foundation. As far as I am able to throw myself into the full stream of the right hon. and

learned gentleman's [Sir Thomas Inskip's] discourse, I gather that this series of amendments is designed to placate the Princes, a very legitimate and necessary task, upon the varying and complicated types of their Instruments of Accession. . . .

"They are all designed to enable my right hon. friend to go round to these Princes one by one—not having them in a great batch of hundreds as we saw the other day in Bombay but one by one, and take them each according to what he can give—from each according to his power, to each according to his need. It will be a case of an indefinite succession of individual dealings. After all, some will contribute a good deal to the Federation, others may only be able to give very little, but he needs them all, and this amendment gives him the power to arrange anything that he likes with any Prince in order to gather his forces together. . . . I hope the right hon. gentleman will tell us what is the least concession of individual State rights which he will accept as suitable for the Crown to concur with. I gather we shall have all kinds of Instruments of Accession. Some will come in for a lot, and some for less, and some for hardly anything—some will hardly pay the green fees. At anyrate, however they are in, there must be some test, and I hope the Secretary of State will tell us quite shortly what it is. . . .

"All these Instruments of Accession will be of varying type and varying value. Some will be whole-timers, some half-timers; others will only just chip in for a bit and go away again. There may be four, five or six different types, or many more. How do these varying values affect the principle of 50 per cent of the Princes coming in, in order to constitute the basis of the Federal system? It is obvious that these react upon one another. You cannot count the half-timers as whole-timers. For the purpose of 50 per cent you cannot count a man who only comes for one thing or another, and who says, 'I came into Federation on this limited liability principle. I quite agree with it as far as that is concerned.' You cannot count him as a cent per cent factor of 50 per cent necessary quota. . . ."

Mr. Churchill sang his swan-song on June 5, 1935, the date of the third reading of the India Bill in the House of Commons, when he indulged in his characteristically gloomy prophecy that at a time "when the Indian masses have acquired a far higher measure of disinterested and enlightened autocracy, they are offered

a bouquet of the faded flowers of Victorian Liberalism, which, however admirable in themselves, have nothing to do with Asia. We thank God that we have neither part nor lot in it" (Government of India Bill). "You have done what you liked. You have now a harder thing before you, and that is, to like what you have done. Only the years can prove whether you will be successful in that or not."

The Act provides for the representation of the whole of the Indian States. It is, however, possible that, in the early years of the Federation, not all the States will accede, and States under minority administration cannot accede until the ruler has attained majority. The White Paper had proposed that the seats affected should for the time remain unfilled. The States' contention that such an arrangement would prejudice States which had acceded to the Federation had considerable force. The Act embodies a compromise on this issue. States which have acceded will be allowed to elect additional representatives in both Houses up to half the number of States' seats (including States whose rulers are minors) which remain unfilled. This arrangement is only temporary, and will cease to operate when, as the results of accessions, 90 per cent of the seats allocated to States are filled, and in any case on the expiry of twenty years from the establishment of the Federation. This arrangement was subjected to serious criticism by Mr. Winston Churchill, who gave the graphic foregoing account of the variety and complexity which this scheme will introduce into the classification and representation of many States in the Federal Legislature.

Mahatma Gandhi and Indian Princes.—While Mr. Winston Churchill steadily opposed the Federal scheme for reasons of his own, Mahatma Gandhi gave his blessings to the proposal and stated at a meeting of the Federal Structure Sub-committee of the Second Round Table Conference, on September 15, 1931, that "Even now the Congress has endeavoured to serve the Princes of India by refraining from any interference". The following extract from his speech makes his position perfectly clear:

"Therefore I can only venture a suggestion or two to the great Princes for their sympathetic consideration, and I would urge this, being a man of the people, from the people and endeavouring to represent the lowest classes of society. I would urge upon them

the advisability of finding a place for themselves also in any scheme that they may evolve and present for the acceptance of this Sub-committee. I feel, and know, that they have the interests of their subjects at heart. I know that they claim jealously to guard their interests, but they will, if all goes well, more and more come in contact with popular India, if I may so call British India, and they will want to make common cause with the India of the Princes. After all, there is no vital real division between these two Indias. If one can divide a living body into two parts, you may divide India into two parts. It has lived as one country from time immemorial and no artificial boundary can possibly divide it. The Princes, be it said to their credit, when they declared themselves frankly and courageously in favour of Federation, claimed also to be of the same blood with us, our own kith and kin. How could they do otherwise? There is no difference between them and us, except that we are common people, and they are—God has made them—noblemen, Princes. I wish them well, I wish them all prosperity, and I also pray that their prosperity and their welfare may be utilised for the advancement of their own dear people, their own subjects.

"Beyond this I will not go, I cannot go, I can only make an appeal to them. It is open to them, as we know, either to come into the Federation or not to come into it. It is up to us to make it easy for them to come into the Federation. It is up to them to make it easy for us to welcome them with open arms.

"Without that spirit of give and take, I know that we shall not be able to come to any definite scheme of Federation; or if we do, we shall ultimately quarrel and break up. Therefore I would rather that we did not embark upon any Federal scheme than that we should do so without our full hearts in the thing. If we do so, we should do so whole-heartedly."

Indian States and their Subjects.—Another question on which a section of the British Indian delegation was keen was a system of election of representatives of Indian States. It was contended on behalf of this section that representatives of Indian States should be elected by the subjects of such States. It would be anomalous to have in both Chambers of the Legislature one set of units elected on a liberal franchise, and another set of representatives who would be simply nominees of their rulers. On

this point, however, the States made their position perfectly clear. Delegates from British India were in an extremely difficult and delicate position. The entire framework of the Constitution hung together. There could be no provincial autonomy without Federation, and it must be All-India Federation, embracing the States and British India. While the Princes reinforced the arguments of British Indian delegates by refusing to enter such a Federation unless it guaranteed responsibility in the Central Government, they modified the character of the Federation by claiming a right to nominate representatives of States to both Chambers of the Federal Legislature. The States made it perfectly clear that they reserved complete liberty to select such persons as would, in their opinion, represent their States with integrity and ability. Some of them went further and claimed the right on behalf of their rulers to revoke the nomination of their representatives to the Legislature if the latter were called upon to resign by notice in writing from their ruler. Such a right would have reduced the Federal Legislature to a farce, and was rightly rejected by the Joint Select Committee, but the Committee conceded them the right to nominate their representatives to the Federal Legislature. The only qualification for representatives of Indian States in either House of the Federal Legislature that is insisted upon in Part II of Schedule I of the Act is that (i) he is a British subject or the ruler or subject of a State which has acceded to the Federation; and (ii) is, in the case of a seat in the Council of State, not less than thirty years of age, and, in the case of a seat in the Assembly, not less than twenty-four years. The conditions specified in (i) may be waived by the Governor-General in his discretion, if there is minority administration in the State; and the sub-paragraph in that case will not apply to any named subject or to subjects generally of that State until that State has a ruler who is of an age to exercise ruling powers; and sub-paragraph (ii) shall not apply to a ruler who is exercising ruling powers.

The Muslim delegates had urged the need for representation of their community in the States quota, so that they may secure 33 per cent representation in both Chambers of the Federal Legislature. The States consistently refused to make any promise to this effect, as they had never discriminated between their Hindu and Muslim subjects. They stated that a communal

problem did not exist in their States, and all communities exercised equal rights there. Sir Samuel Hoare, in his speech at the plenary session of the Third Round Table Conference on December 24, 1932, announced on behalf of the British Government that the Muslim community should have 33 per cent of British Indian seats in the Federal Chambers. So far as India is concerned, that must be a matter for arrangement between the communities affected and the Princes. The British Government would, at any time, give their good offices to make it as easy as possible for an arrangement between those parties in regard to future allocation of seats. Various attempts were made to arrange a *via media*, but they proved useless, and guaranteed Muslim representation is confined to British India. Some of the representatives of Indian States in the Federal Legislature will be Muslim, and States like Hyderabad and Kashmir, the former as ruled by a follower of Islam and the latter as predominantly Muslim, are bound to send many Muslims, but they will be bound by the instructions of such States, and will be servants of these States, and not representatives of the Muslim community.

Subsection (4) of section 26 lays down that for the purposes of the section (specifying disqualifications for membership of the Federal Legislature) a person shall not be deemed to hold an office of profit under the Crown in India by reason only that (a) he is a Minister either of the Federation or of a Province; or (b) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

The implications of paragraph (b) of subsection (4) are obvious. The rulers of a State will be able to nominate not merely their subjects but also subjects of British India who are in the services of the Crown in India and have been deputed to the State. Hence, Government servants who have been deputed to States can sit in the Federal Legislature as representatives of such States. This will alter the complexion of the proposed Legislature, and bring in, by a different route, a number of officials who could not otherwise sit in that Legislature.

The Upper Chamber will be perpetually renewed, and one-third of its members will be elected every third year. This brilliant suggestion was made by Lord Lothian, whose ability, integrity and devotion to India won him the esteem and affection of Indians of

all classes. The system is based on the model of the U.S.A. Senate, and has worked most successfully in that land. It is no exaggeration to say that part of the prestige, influence and importance which that body has built up is due to the unity of policy and continuity of tradition which this plan ensures. The Senate is perpetually renewed and is never dissolved. The regulations provide that upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but for the purpose of securing that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only; one-third shall be chosen to serve six years only; and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of the provisions of the paragraph. These regulations are confined to British India.

Allocation of British Indian Seats in the Federal Legislature.—In the first place the total number of seats in both Chambers earmarked for British India are allotted to Provinces. A glance at tables in Schedule I will show the seats allotted to each Province in both Chambers. These are distributed among the communities and interests specified in the table. European, Anglo-Indian and scheduled castes are thus defined: "A European" means a person whose father or any of whose other male progenitors in the male line is of European descent and who is not a native of India; "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India; "an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian; "the scheduled castes" means such castes, races, tribes or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as "depressed classes", as His Majesty in Council may specify. A native of India has the same meaning in this paragraph (paragraph 26 of Part I of Schedule I to the Act) as it had for the purposes of section 6 of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the

dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only.

Mahatma Gandhi's Resolve and the Poona Pact.—The composition of the Provincial Legislatures does not call for any remarks. It was determined by the Communal Award, which, as explained elsewhere, was modified by the Poona Pact. The Award incorporates the provisions of the Poona Pact. His Majesty's Government had allotted a certain proportion of seats to the "scheduled" castes in the Communal Award which was published in India on August 4, 1932. Serious objections were taken to separate representation which the Award had guaranteed to scheduled castes, and the Hindu community was greatly excited over an arrangement which would, in its opinion, mean disintegration. Mahatma Gandhi had consistently opposed separate electorates for these classes. While the Mahatma was prepared to reserve certain seats for them in the legislatures in joint electorates, he was fundamentally opposed to their separate representation. He had given forcible expression to these views in the Minorities Committee of the Second Round Table Conference in 1931. In a letter to the Prime Minister from Yervada Prison on March 14, 1932, he lodged an emphatic protest against this proposal. On the publication of the Communal Award, the Mahatma gave an ultimatum to the British Government: "I have to resist your decision with my life. The only way I can do so is by declaring a perpetual fast unto death from food of any kind save water with or without salt and soda. This fast will cease if during its progress the British Government of its own motion or under the pressure of public opinion revise their decision and their scheme of communal electorates for the depressed classes, whose representatives should be elected by general electorate under a common franchise, no matter how wide it is. The proposed fast will come into operation in the ordinary course from the noon of 20th Sept. next unless the said decision is meanwhile revised in the manner suggested above." For five days, from September 19 to 24, Mahatma Gandhi's fast continued with unexampled severity and heroic fortitude. The sight of the great Mahatma fasting to death under the mango tree in Yervada Jail roused leaders of public opinion into activity, and the wave of sympathy and pity which swept over the length and breadth

of the land brought together Hindu leaders from many parts of India to Poona. Everyone felt that the great Hindu leader could not be allowed to starve himself to death, and his life must be saved at all costs. Negotiations began with Dr. Ambedhkar, but the latter drove a hard bargain. He was prepared to drop separate electorates, provided he could secure a substantial proportion of seats for the scheduled castes. A formula was at last agreed to by all parties, and a pact was signed at Poona, and cabled to the Prime Minister for acceptance.

Gains of Depressed Classes.—His Majesty's Government promptly accepted it. The Poona Pact greatly increased the representation of the depressed classes, and made a substantial improvement in their position. In the new Constitution the number of seats for depressed classes out of the general or Hindu electorate is as follows: Madras, 30; Bombay with Sind, 15; Punjab, 8; Bihar, 15; Orissa, 6; Central Provinces and Berar, 20; Assam, 7; Bengal, 30; United Provinces, 20: total, 151. In the Central Legislature 18 per cent of the seats allotted for general electorate for British India were to be reserved for the depressed classes. The terms under the Poona Pact were spectacular and gave to the depressed classes more than they themselves could ever hope for. They had more than doubled their representation by securing 151 seats in the Provincial Legislature as against the 71 awarded by the Prime Minister. The sole concession which the scheduled castes made for this extraordinary harvest was that while seats were reserved for them, and there was to be a primary election by members of the scheduled castes for a panel of four candidates for each seat so reserved, the electorates were to be joint; that is to say, there was to be a general or Hindu electorate.

The Hammond Committee on the Poona Pact.—The wording of the Poona Pact was vague on the method of election by joint electorate of caste Hindus and scheduled castes. It contained the following provision: "Election to these seats shall be by joint electorate, subject however to the following procedure. All members of the depressed classes registered in the electorate of a constituency will form an electoral college, which will elect a panel of four candidates belonging to the depressed classes for each of such reserved seats by the method of the single vote, and the four persons getting the highest number of votes in such primary

election shall be the candidates for election by the general electorate." This provision became the focus of an acute controversy among different sections in India. The interpretation of the Hammond Committee will be accepted by all impartial men, and has been embodied in the Report. According to the Committee, the number of four is neither a maximum nor a minimum, but an optimum. It is desirable that there should be five or more candidates at the primary election, but it is in no way compulsory. "If there is only one candidate as the result of the primary election, or on account of subsequent withdrawals, that candidate should be returned unopposed for the reserved seat at the final election." They stated that in all Provinces, except Bengal, there should be no restriction on a member of the scheduled castes standing for the open seat. If there is one candidate of the scheduled castes as the result of the primary election, or on account of subsequent withdrawals, that candidate should be returned unopposed at the final election. The Committee rejected the proposal of single non-transferable vote, not only in the primary election, as agreed on in the Poona Pact, but also in the final election, on the ground that this would run counter to the spirit of the Pact. They recommended the cumulative vote, the elector being allowed at the final election to divide or to combine his two votes. They recommended that the primary election should take place two months before the final election, and advocated summary procedure for dealing with complaints of irregularity, etc. These recommendations have been embodied in the Orders in Council (Provincial Legislative Assemblies) and (Provincial Legislative Councils) dated April 30, 1936. The Committee dealt with this, as with other questions, in a spirit of impartiality, and the Report is distinguished for thoroughness.

Urban versus Rural.—The Southborough Committee recommended in paragraph 12 that smaller towns should be merged in the rural constituencies, and that these towns should be combined to form urban constituencies only where local circumstances rendered such a course desirable, *i.e.* where the towns might otherwise establish their ascendancy over rural interests. Urban constituencies were given liberal representation. These arrangements have remained in force till the present time. The Franchise Committee presided over by Lord Lothian suggested 5000 as

a criterion for distinguishing urban from rural areas. This was rejected by the Hammond Committee. The Committee pointed out the difficulties of finding a criterion of universal applicability, and stated that it would be impracticable to secure uniformity. The views of different Provinces varied considerably, and the Committee were compelled to deal with each Province individually.

Delimitation of Constituencies.—The main recommendations of the Hammond Committee were generally adopted by the Government in the Orders in Council dated April 30, 1936. The recommendations regarding multi-member constituencies, however, were strongly opposed by the Madras Government, and the objection was upheld.

For election to the Lower House of the Indian Legislature the Act provides for three electoral colleges for Anglo-Indian, European and Indian Christian seats.

Persons to fill the seats in the Federal Assembly allotted to each Governor's Province as general (Hindu) seats, Sikh seats or Muhammadan seats are to be chosen by all members of the Provincial Legislature who represent general, Sikh or Muslim constituencies in accordance with the principle of porportional representation by means of the single transferable vote. A different method is designed for election of scheduled castes to the Federal Assembly. For women, an electoral college consisting of women members of all Provincial Legislatures will elect women members to the Federal Assembly. Of the nine women's seats allotted to Provinces at least two will be held by Muslim women, and at least one by an Indian Christian.

Provincial Assemblies.—The general qualifications for membership of these assemblies do not differ from those laid down for the Federal Legislature. A candidate for membership of the Provincial Assembly must be at least twenty-five years of age and, in the case of the Provincial Legislative Council, not less than thirty years of age. Election will be by separate electorates, and members of each community—Hindu, Muslim, Sikh, Indian Christian, Anglo-Indian and European—can vote only in their communal groups. The franchise qualifications vary from Province to Province. The qualifications are dependent upon: (1) taxation, such as payment of income tax, etc.; (2) property, holding land in a Province; (3) education, namely, the passing of certain examina-

tions such as matriculation or a university examination; (4) service, such as retired, pensioned, discharged officers, non-commissioned officers or soldiers of His Majesty's forces; (5) sex. Additional qualifications are prescribed for women, in order that a large number may be enfranchised. The Act has been unnecessarily encumbered by minute details which ought to have been left to an Order in Council, and its bulk could have been conveniently reduced. The qualifications have been greatly lowered both in the urban and rural areas, while in the case of women, besides the general qualifications described for male voters, they will also be qualified if they (1) possess a property qualification in their own right, or (2) are wives or widows of men with property qualifications for the present Provincial Legislatures, or (3) possess an educational qualification. The White Paper had stiffened the additional qualifications proposed by the Lothian Committee by providing that women qualified in respect of property held by their husbands should make an application for entry in the electoral roll. It also stiffened the educational qualification.

Women's Movement in India.—The Joint Select Committee agreed with the Simon Commission that the women's movement holds the key of progress and the results it may achieve are incalculably great. "We are all the more convinced of the necessity for strengthening the position of women under the new Constitution, and are not satisfied, in the light of discussions that have taken place, that the proposals in the White Paper are adequate to achieve this object." The devoted work which their representatives on the Joint Select Committee, Begum Shah Nawaz and Mrs. Subbarayan, rendered to the women's cause is too well known to need mention here. The deputation of Indian women that gave evidence before the Joint Select Committee seems to have made a deep impression on its members. New India is bound to profit more and more by the advice, suggestion and help which enlightened Indian women can render in the new era of social and educational reconstruction which awaits our motherland.

The Joint Select Committee improved the White Paper proposals by suggesting that: (1) the application requirement should be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar and Orissa, the Central Provinces and the United Provinces; (2) that in Bombay, the Central

Provinces, the United Provinces, the Punjab and Assam a literacy qualification should be substituted as educational qualification for women; (3) that in every Province, except the Frontier Province, the wives of men with military service qualification for the vote, and pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular Forces should be enfranchised, registration in this case being on application only; (4) in cases in which registration will still be only on application, steps should be taken to mitigate the effects of these requirements by allowing them to make application by letter, and permitting the husband to do so on behalf of his wife. The application requirement has the material modifications of the Joint Select Committee and very few women have applied for entry on the electoral roll. The Committee ought to have discarded the application requirement altogether. These recommendations have been embodied in the Act. It is calculated that in most Provinces, save possibly in Bihar and Orissa, the ratio of women to men voters will be higher than one to five. At the present time it is only one to twenty. Steps may be taken before the second election under the new Constitution to abolish the application requirement by women, and substitute literacy for a higher education standard.

The Great Increase of the Electorate.—An idea of the far-reaching social and political changes introduced by the Act will be conveyed by the following figures: At the present time there are only 7 million male and 315,000 female voters in India. When the Act is brought into force the number of male voters will be increased to 28, or possibly 29, million persons, and that of female electors will be increased to 6 million electors. By the Act nearly 14 per cent of the total male population of British India will be enfranchised as compared with the present 3 per cent. The Franchise Sub-committee of the first Round Table Conference had suggested immediate increase of the electorate so as to enfranchise not less than 10 per cent but not more than 25 per cent of the total population. Proposals embodied in the Act of 1935 are therefore midway between the maximum and minimum percentages suggested by the First Round Table Conference. The political and social effects of the enfranchisement of nearly 35 million electors, male and female, will be far-reaching. Indian democracy will have to prove to the world its fitness to exercise

the great responsibility which has been placed upon it. The electorate is undoubtedly inexperienced, and liable at times to periodic fits of excitement. But among those who have worked in the Indian Legislatures and have represented Indian electors, there has never been any doubt on the point.

Faith in Indian Voter.—They have faith in the enduring qualities of the Indian voter, and are convinced that he will discharge his new responsibility with discretion and judgment. We may have to pass through difficult times in the first five years, but the Indian voter will, I have no doubt, rise to the occasion and prove worthy of the trust reposed in him. However hazardous the experiment may appear to some people, those who have worked among the Indian masses are convinced that a liberal franchise will place on a firm and durable basis the foundations of our nationalism.

CHAPTER XI

THE MINORITIES IN INDIA

MUSLIM AND OTHER COMMUNITIES

THE New Constitution embodies the decision of His Majesty's Government regarding the composition of the Legislatures—Provincial and Federal (see Appendix II.), in accordance with the "Communal Award". As has been explained, the Award was due primarily to the failure of communities in India to come to an agreement on the question of the proportions of seats to be assigned to various communities. This rendered further progress in the work of the Second Round Table Conference difficult, if not impossible. The Muslim community had made it perfectly clear that it could take no part in any scheme of Central responsibility until and unless its position was clearly defined in the proposed scheme, and adequate steps were taken to safeguard its political individuality.

All-India Muslim Conference.—The fundamental resolution of the All-India Muslim Conference, passed at its inaugural meeting in Delhi on January 1, 1929, under the inspiring leadership of His Highness the Aga Khan, had declared unambiguously that no Constitution for India, by whomsoever framed, would be acceptable to the Muslim community unless it concedes the demands put forward by the community.

These demands included a majority for the Muslim community in the Punjab and Bengal, separation of Sind from Bombay, the introduction of genuine provincial autonomy, introduction of equality of status for the North West Frontier Province, weightage for Muslims in the Legislatures of all Provinces where they are in a minority, fundamental safeguards for the protection of their religion, culture, and civil rights, representation of the community by separate electorates, adequate representation in the public services, and residuary powers to be vested in the Provinces.

The Muslim Conference wisely refrained from committing

itself to any constitutional scheme, nor did it involve itself in the interminable discussions that ensued on numerous points between the champions of a unitary system and advocates of genuine Federalism. It would have stultified itself if, at the outset of the discussions, it had entangled itself in the meshes of constitutional conundrums and logomachy. Its object was clear as crystal. It aimed at concentrating all the forces of the community on the achievement of an honourable position in the new Constitution. It was not opposed to advance, whether in the Centre or in the Provinces, and its leaders had unequivocally condemned terrorism and anarchism on the one hand, and the reactionary policy of certain pronounced diehards on the other. It was led at this time by His Highness the Aga Khan, who wielded enormous influence in his community and is the most influential Muslim leader at the present time. Before its inauguration it was thoroughly disorganised by internal dissensions and by the lack of a political ideal and programme which could inspire its ranks and unify its scattered forces. It had largely ceased to count in the councils either of the majority community or the Government, and seemed exhausted and leaderless after the great efforts it had made in the non-cooperation days in 1921–23. The resolution of the Muslim Conference united all sections of Indian Muslims and brought the most prominent and influential leaders to one platform.

The intensive work undertaken immediately after the inaugural meeting in Delhi focused the attention of the Muslim masses on the need for safeguards, and by the end of 1929 the Conference had become one of the most representative bodies of Muslim India.

The All-India Muslim League continued to function under the brilliant leadership of Mr. Jinnah and there was intimate association between the two bodies. The communal programme advocated from the platform of both these organisations remained unimpaired and the Muslim front remained unbroken. The clearness and directness of the clear-cut issues which it placed before India made it one of the most practical and realistic of all the programmes which have been formulated during the last seven years.

Communal Award and Government.—In their decision on the Communal question, His Majesty's Government pledged themselves not to vary their recommendations to Parliament on this subject save with the mutual agreement of the communities

affected, nor would they take part in any negotiations initiated by the communities with a view to revision of the Award. One such variation has been made by the Poona Pact, but that was done as a result of discussion and decision on an issue on which the communities concerned had reached an agreement, and was in conformity with the undertaking given by the Government. The Government stated in their decision that modification of the communal electorate arrangement might be made at the end of ten years with the assent of the communities affected, for the ascertainment of which suitable means would have to be devised.

An impartial examination of the Award must lead every person to the conclusion that while the Muslim community had undoubtedly secured certain advantages, injustice had not been done to any community or interest in India, as it was essentially based on a compromise. While it is true that the Muslim community had not been able to secure a statutory majority in Bengal or the Punjab, it must be admitted that its position in these Provinces has been greatly improved. Bengal Muslims had been very badly treated by the Congress-Muslim League Pact of 1916.

General Position as a Result of the Award.—They constituted nearly 54 per cent of the population, yet their proportion had been reduced to 33 per cent by the Act of 1919. The new Act has removed this anomaly and assigns to Muslims in Bengal 48·4 per cent of the total membership of the Provincial Assembly. In the Punjab the position was complicated by the existence of a third community—the Sikhs—who insisted on effective weightage in the Punjab Legislature. Punjab Muslims are nearly 55 per cent of the total population, and in the new Act they may manage to secure 51 per cent of the total membership of the Provincial Legislature. In two other Provinces Muslims will be in a majority, viz. Sind and the North West Frontier Province. But in Assam, Bihar, Orissa, United Provinces, the Central Provinces, Bombay and Madras they will be in a minority. The Muslims have also secured the right to elect their own representatives to the Provincial and Federal Legislatures by separate electorates. This right had been guaranteed to them by the Acts of 1909 and 1919.

Of other minorities Indian Christians will have altogether twenty seats in various Provincial Legislatures, of which eight will be in Madras. In the Federal Assembly their total strength is eight

out of 250 British Indians and two in the Council of State. There representation is not very large, but it correctly reflects their population strength in British India. They have secured separate electorates and will enjoy all the rights of minorities. Indian Christians have made astonishingly rapid progress during the last fifty years, and the last census shows that it is maintained. Their most striking gains have been achieved among the hill tribes of Assam, the aborigines of Bihar and the Central Provinces and the depressed classes of Madras Presidency. Various missions, Indian and European, have rendered immense services to India by their selfless social work, their diffusion of higher education, and by the example of piety and self-sacrifice which they have furnished to other communities in India. Our country would have been the poorer by their absence. The Reforms are not likely to put any obstacle to their heroic endeavours, and as India will soon be launched on the crest of a wave of social reform and social progress, she will require the help of men of this type, who have dedicated their lives to the sacred cause of social and moral uplift. None could render greater service than those who have been working self-sacrificingly among the lepers and criminals, the pariahs and outcastes of society. Indian Christians have brought a fresh outlook and a keen intellect to bear on many of the social problems of India, and their help will be needed more and more in future as India attains a standard of social and intellectual progress which may compare favourably with that of eastern or even western Europe. There is no reason why Muslims, Sikhs, Hindus and Indian Christians should not combine in a campaign against illiteracy, disease and ignorance on the basis of a cooperative enterprise wherein the organised resources of all these communities could be pooled together for a great crusade on which all of us are intent. Foreign nations can play a very important part in bringing leaders of various communities on a common platform, and their characteristic contributions to the solution of India's social needs will be of inestimable value in this period of transition and change.

Sikhs.—The Sikhs have been allotted four seats in the Council of State, six in the Federal Assembly, thirty-one in the Punjab and three in the Frontier Legislative Assembly. The future of the Sikhs is assured. They have nothing to fear from the Punjab Muslims, as the latter may not be able to secure even a majority of 1 per cent in

the Punjab Legislature. Their martial traditions, sturdy character and virility are adequate safeguards against their submergence or oppression. It will be impossible for any community in the Punjab to form a Cabinet which does not include real representatives of this community. The peculiar position which the three communities occupy in the Province will make it impossible even for a superman to form a Government in which the real leaders of all of them are not included. The balance of communal forces is the most effective guarantee of religious and political toleration. There may be an agitation now and then (such as the agitation over the Sahidgunj mosque, Lahore) which may sweep over the whole province like a prairie fire on a Canadian farm, but it will be of exceedingly short duration, as the communities will find that under the new Act it will be not a foreign bureaucratic government but ourselves who are charged with the duty of maintaining law and order. The worn-out complaints against the police will lose their potency and effect, as now we will have to discharge the responsibility for maintaining law and order. The Government in India has so far been regarded as a policeman with a big truncheon, and the police have been generally criticised as a principal instrument of a foreign bureaucracy. In future Indians alone will organise a Cabinet whose supreme duty it will be to maintain peace and order in the land.

Hence responsible leaders will think twice before they countenance any action which is likely to produce disastrous effects either on peace and tranquillity or on inter-communal relations. It is probable that the future line of policy in the Punjab will be based on differences between the urban and rural areas, and as the Sikhs and Muslims are mainly agriculturists there is a probability of agriculturists of all parties in the Punjab forming a solid and well-organised majority. The Sikhs are imbued with the spirit of discipline and organisation, and have shown great initiative and driving power in many enterprises throughout India as well as in the British colonies. These are bound to contribute substantially to the building up of a strong and united Punjab in which each community enjoys rights and privileges sanctified by convention and hallowed by tradition.

Mian Sir Fazli Husain, after his membership of the Viceroy's Executive, returned to public life in the Punjab and started pre-

parations for the organisation of a National Unionist Party; and his early death has caused a gap that cannot adequately be filled. India has produced few leaders in the twentieth century who can compare with Mian Sahib in eminence, ability or character, and the work he rendered to his Province and India is imperishable. A born organiser, with infinite capacity for taking pains, he towered like a giant and had the solid backing of the most responsible and influential elements in the Punjab.

Europeans have been allotted 7 seats in the Council of State and 8 in the Federal Assembly, and they will be able to secure a majority of the 11 seats which have been reserved for representatives of commerce and industry in the Federal Assembly. They have also been given 3 seats in Madras, 3 in Bombay, 11 in Bengal, 2 in the United Provinces, 2 in the Punjab, 1 in Bihar, 1 in Assam and 1 in Orissa. Besides the seats which are reserved for Europeans, they are bound to secure a substantial proportion of seats in constituencies for commerce, industry, mining and planting in various Provincial Legislatures. The number of such seats is 56 in all the Provinces, and Europeans will capture at least 40 out of the 56. The European capitalists in India have considerable stake in the country, and no impartial person can deny them the right to safeguard their trade in India. The capitalised value of their enterprises in India has been estimated at 1000 million pounds.

Europeans in Indian Legislatures.—In the Legislatures the non-official Europeans have generally pursued the path of conciliation and reasonableness, and have established their influence by their sound common sense and shrewdness. It is true that they had to side with the Governments on many occasions on questions of law and order, nor can it be denied that they have gone definitely against Indian aspirations on some matters in the Legislature. They will hold the balance in the Bengal, and probably in the Assam, Legislatures. They may make or mar the Ministry in Bengal. Their importance is not to be judged merely by the amount of their representation in the Legislatures; their influence, the strength and solidity of their character, and their freedom from communal and sectional prejudices will give them a most potent influence in the new political structure.

The Anglo-Indians.—Anglo-Indians have been given one seat

in the Council of State, four in the Federal Assembly and eleven in Provincial Assemblies. Anglo-Indians would undoubtedly have been exposed to serious risks owing to the severe competition with which they are faced, had not the Services Sub-committee of the First Round Table Conference in 1930 and the Joint Select Committee in 1934 come to their rescue. The Act safeguards their position in the services for which they have shown special aptitude. Their education has been effectively safeguarded by the Irwin Committee plan in the Third Round Table Conference, and it has been placed on a sound financial basis by the new Act. Under section 38 of the Act, Anglo-Indian and European communities are assured of grants-in-aid of their education on the basis of the average of ten financial years ending March 31, 1933. This grant cannot be reduced in any Province except by a resolution passed by a majority of at least three-fourths of the members of the Assembly. In this, grants for capital purposes are included.

The Position of Indian Muslims.—Having dealt with the minor minorities, let me now discuss the Muslim community in India. The Muslim community has gone through a critical period of political reconstruction during the last seven years. The Khilafat agitation threatened to engulf its political position. The non-co-operation movement was a movement of passion, and it appealed to the Muslim masses. It received its momentum and strength from the intensity of its religious fervour and the brilliance and energy of some of its prominent leaders. But it was essentially a destructive force, in which subconscious impulses, lofty idealism, youthful indiscretion and desire for power and leadership were mixed in a most incongruous manner. While it called forth the dormant energy of the Muslim community, and produced strong and able men like Maulana Muhammad Ali, it was devoid of constructive thought and was purely negative in its aims, methods and policy. It has not expressed itself in any powerful institution for the social and moral uplift of the community, or a practical programme of political rights. It was curiously devoid of constructive or cooperative statesmanship and believed more in *élan* and concentrated emotion than patient and steady effort and heroic perseverance. It swept over the country like a whirlwind and disappeared with lightning rapidity. Its ideal was sacrifice for the cause of religion and subordination of self to the glory of God.

This ideal was often preached, but it was found incapable of realisation by many.

Backwardness of Muslims in Political Education.—The real explanation of this aberration is to be found in the failure of Indian Muslims to take an active part in the political life of their country. The reasons for it are partly historical and partly social. Before the Indian Mutiny, discontented scions of noble houses whose ancestors had ruled over mighty kingdoms in India were eating out their hearts in grief, melancholy and disappointment. When the Mutiny broke out they threw themselves into it with the fury of despair and ruined themselves and their familes by their folly. The confiscations, fines and imprisonments that followed the suppression of the Mutiny told heavily on the Muslim community. Its economic position was shattered. Its ignorance of the English language—ignorance born partly of pride and partly of priestly fanaticism—was colossal. It was suspected in the eyes of the Government, and it found itself deprived of the position which it had occupied before the Mutiny.

Isolation of Muslims.—It remained disdainful and defiant and held aloof from all political activities. Its ignorance compelled it to forswear politics and English education, and it seemed incapable at first of adapting itself to the changed circumstances. It was destitute of even rudimentary knowledge of Western culture and disdained to profit by the experience and example of other communities. Politics was eschewed, as requiring Western knowledge and implied contact between the community and the ruler. Later, the Muslims acquired a knowledge of English education and began to build up a political organisation. In the beginning of the twentieth century it found itself in the throes of momentous political changes. The partition of Bengal had roused it from its torpor of nearly fifty years, and the demand for political advance made it conscious of the importance of the reforms which Lords Minto and Morley were then planning. A deputation of leading Muslims, headed by His Highness the Aga Khan, waited upon Lord Minto in 1906 and asked for separate electorates for the Muslim community in the Legislatures. The community had thus begun to take an interest in the politics of the country, and from 1909 onwards a few brilliant Muslim leaders, such as Maulana Muhammad Ali, Mr. Jinnah and Sir Ali Imam and others, began to take

a marked part in the political activities of the country. Politically the community acquired self-reliance in the formative period from 1910 to 1920, and the Treaty of Sèvres with Turkey plunged it into the turbid ocean of non-cooperation. From one point of view the movement may be conceived as a protest against a long and inglorious period of political lethargy. The failure of the non-cooperation movement left its votaries in a chastened frame of mind, and the principle of non-cooperation, when contrasted with the methods which were actually pursued, produced a profound effect upon the sane and sensible elements of the community.

Shortly after 1923 the reaction against the excesses of the Khilafat and non-cooperation cults began to be felt all over India. The community pulled itself together and the movement rapidly lost its influence. While it produced disastrous effects on the political and educational conditions of Muslims, and the Aligarh Muslim University was saved from destruction only by the heroic exertion of its champions, it undoubtedly roused Muslims to action and made them an important factor in the political life of their country. The decline of the Khilafat movement produced hopeless disorganisation in the Muslim political programme. The next five years, 1923–28, was a time of confusion and vacillation. Muslims lacked both a political creed and political spirit. Negotiations and discussions on inter-communal and constitutional issues were pursued at interminable length and numerous formulas were devised for the solution both of the communal and constitutional problems. But they were found ineffective and useless. The tension between Muslims and Hindus on the one hand and between the Congress and the Government on the other, grew every year. The situation was complicated by the foundation of the Hindu Mahasabha and its growing popularity and influence. Its vivid appeal to Hindu sentiment made it impossible for the Congress to speak on behalf of the community as a whole. This respectable insurrection of orthodoxy in arms could hardly be overlooked by Congress, and the latter was chary of entering into pacts with communities which might be repudiated by the Mahasabha on behalf of the Hindus. The Congress adopted a bold policy in the Nehru Report and committed itself to a series of far-reaching proposals which aroused strong criticism in many important circles.

The Muslim community was greatly agitated, but its scattered ranks were united by the end of this year. The other minorities were also dissatisfied and made their opposition perfectly clear. The Indian States were excited and the Butler Committee had formulated the doctrine of paramountcy by stating that "paramountcy is paramountcy". The landholders began to protest and and ask for safeguards for their rights. Practically all interests and communities which had not so far identified themselves with the Congress were automatically united.

From that time to the present day the Congress has made no further attempts at constitution-making, and the Report was mournfully shelved in Lahore at the end of 1930. The Muslim community now entered on a period of intense political activity on constitutional lines, and the inspiring leadership of His Highness the Aga Khan in London and the late Mian Sir Fazli Husain in India infused new life into it. To those who, like the writer, had the privilege of working with them, one thing is perfectly clear. They were the political architects of the great Muslim community in the post-Reform period, and but for their help and advice Muslim India would have been a confused heap of inarticulate individuals. It would have been destitute of unity and solidarity, and its political foundations would have been built on the quicksands of opportunism and vacillation.

The Work of Muslim Leaders in London and India.—The practical question with which the Muslim community is now faced is: "What is to be its position in the new Constitution? Will it be able to pull its own weight?" The political training it has received since the Reforms of 1919 has created a new spirit among the Muslim masses as well as the classes. The latter have been able to achieve substantial rights for their community after an agitation lasting nearly ten years. This is not the time to assess the work of the Muslim constitutional party in London, nor can an objective estimate of its achievement be given at a time when political controversies are acute. When the history of this period is objectively written it will be found that the Muslim delegation in London and its great leader in India deserved well of the country and the community. This is all that can be said at present. The difficulties of Muslim delegates were enormous and might have damped the spirit of the boldest man. From the

middle of 1928 till the end of 1933 this section had to fight for its principles with great pertinacity and courage, and played no mean part in several important stages of constitutional agitation.

They disdained pomp and show, avoided newspaper stunts, practised the art of self-effacement to perfection, and ultimately wrung substantial concessions by sheer persistence and dogged tenacity. Never for a moment were they deflected from the course they had marked out for themselves.

Reasons for their Success.—They succeeded by a rare combination of tact and patience, courage and initiative. The work was conducted on essentially constitutional lines through committees, legislative bodies in India and other organisations, such as the Muslim League and Muslim Conference. It was a signal triumph of constitutionalism over the policy of direct action, and a vindication of the constructive cooperation pursued at a time when few had the courage to enunciate it, and fewer still were prepared to act upon it. It is a constructive work whose significance will be realised by the next generation when the effects of the new Constitution are justly appraised. I have avoided references to personalities who took a prominent part in these movements, but I must again mention one individual who was a tower of strength not merely to the Muslim community, but also to all the sections who cooperated in London in the years 1930–33—the late Mian Sir Fazli Husain. It would have been impossible for the Muslim community to secure its rights, whether in India or England, without the advice and help of that statesman. His part in the reconstruction of the Muslim programme and policy will not be forgotten by his community. Posterity will know the real value of the work he has done for his country.

Muslims in the New Constitution.—Let me summarise the position of the Muslims in the new Reforms. The Provincial and Central Legislatures in India, as well as the local bodies such as the municipal and the district boards, have trained a substantial number of Muslims in the art of administration. Some difficulty may undoubtedly be felt in Bengal where the disparity of the Muslims in the cultural, economic and political position of the two communities is likely to place them at a disadvantage. The number of Muslim landowners in Bengal is exceedingly small, and their proportion in commerce, higher education and ad-

ministration of the Provinces is limited. They have undoubtedly a great leeway to make up and it may take them some time to attain the position which is now occupied by the Hindu community in Bengal. They have, however, made considerable progress in higher education and the Dacca University has proved a boon to the Muslims of Bengal. But their percentage in learned professions is still very low, and unless extraordinary efforts are made by the Government and the community to raise it to a higher level they will lag considerably behind other communities. Bengal has led all political and social movements in the past, and its foremost leaders endeared themselves to millions of Indians by their self-sacrifice and patriotism. The names of C. R. Das and Sir Surendra Nath Banerjee are household words in India. They were a source of inspiration and energy to their contemporaries, but it must be confessed that Bengal has not been able to retain that leadership at the present time. Terrorism will present a very difficult problem to the new autonomous Province, and the success of the new Constitution in Bengal will depend very largely on the way in which this problem is tackled.

Policy of Muslim India.—The Muslim community in India can succeed only if it forms an alliance with the other communities and pursues a policy of conciliation and compromise. It is impossible for it to form a purely Muslim Cabinet in any Province, and on this principle all sensible leaders of the community are agreed. The Bengal Cabinet must include representatives of Europeans and Hindus, and its policy should be based essentially on the principle of give and take. In the United Provinces and Bihar, Muslims are not afraid of the overwhelming majority enjoyed by Hindus in the Provincial Legislatures, as they are sufficiently equipped by education, character, experience and training to be able to play their due part in the new régime.

They need not fear any impairment of their political individuality, as separate electorates will effectively safeguard it. A separate electorate is, however, a double-edged weapon, and unless Muslims give up their narrow and parochial outlook, work for a day when communal representation will be abolished, eschew communal parties inside the Legislatures, and show a skilful combination of realism, parliamentary skill, tact and prudence, they may be completely submerged. They must avoid the Scylla of inferiority, and

the Charybdis of superiority, complexes, and maintain a sane and healthy outlook on political movements. Parliamentary life depends not merely on abstract principles and political programmes, but on temperament and on touch.

Muslim Policy inside the Legislatures.—Muslim social, educational and political work will go on outside the Legislature, but inside they will be a part of the larger whole and will coalesce with other groups. In the Frontier Province, as in Sind, Muslims will redeem the promises they have made in the past. They know that it is impossible to run the administration without the support and sympathy of the Hindu minority. The problem of minorities in India cannot be confined to one or two Provinces but is an all-India problem and affects all communities, as a community may have a majority in one Province and be in the minority in the other. Hence, anything done in any Province by a majority community against a minority community is bound to have repercussions all over India. Here consists the safety of all minorities, whether Hindus or Muslims, for Ministers in a Province where their community is in a majority will think twice before they attack the culture, language or civic rights of the minorities of their Province. If a Minister is egregiously foolish and partisan, and pursues a communal policy, he will find that retaliatory measures will be adopted in a neighbouring Province against members of his community, and it is likely that this will restore the equilibrium. If the Frontier Government prohibts the minority from using Hindi or Gurmukhi as a medium of instruction in its schools, the Bihar Government may retaliate by forbidding the use of Urdu in its schools. I have not considered the possibility of the Governor's intervention in such cases, as I feel it is essential for the maintenance of good relations between the two communities that the Governor's special responsibility should be rarely invoked. The aim of the communities in every Province ought to be to avoid recourse to Governors in their domestic quarrels, and to arrange their mutual relation in such a manner as to build up healthy conventions on points which have unfortunately been the subject of controversy and are likely to cause trouble in future. In the Punjab the problem bristles with difficulties, but there is no reason why a solution should not be found before the next elections. The Punjabis are gifted with a sound common sense and have special

aptitude for solving delicate communal problems when they are on their own resources. In Sind the Hindu minority, owing to its supreme position in commerce and education, will influence every Cabinet that is formed during the next ten years. It is unthinkable that it should get no representation in the Sind Cabinet. In the Centre the Muslim position will undoubtedly be weaker than it has been in the past, as they have been allotted only 33 per cent of the representation of British India.

It must, however, be stated quite frankly that the Indian States have not as a rule discriminated between Muslims and Hindus, and some of the most advanced and progressive States, such as Hyderabad, Mysore, Baroda, Bhopal, etc., have shown that Indians can suppress communal disorders with a strong hand. They have been singularly free from ebullitions of communal frenzy, and there is little fear of the organisation of communal parties in the Federal Legislature. The latter will not be concerned with issues which have convulsed India in the past, as the main problems will be economic, and on this question there is a greater likelihood of cleavage between British India and Indian States and between the Federation and its units than between Muslims and Hindus. The perennial conflict between the Federation and the units will also loom large, and there is bound to be a strong section imbued with the determination to limit and restrict the power of the Centre within proper limits.

Provincial Autonomy and Muslims.—The policy of Muslim India must receive a specific mould from the increased powers conferred on autonomous Provinces. Each Province has many peculiar problems of its own, and the energies of Muslim leaders will be absorbed by the demand which the variety, extent and volume of these problems will make on the members of all communities. The solidarity of Muslim India has been the result of intensive work carried on for a number of years by the foremost leaders of the Muslim community, both in England and India. There is a possibility of this unity being impaired by the centrifugal tendencies which are inherent in the development of parochial patriotism and narrow provincialism. Indeed, the force and momentum of the all-India movements which have profoundly stirred the whole community in the past will be reduced by the pressure which many Provincial problems will exercise on the current and

direction of Muslim policy in each Province. Provincial autonomy may generate provincialism of an exclusive and particularist type, and may seriously militate against national solidarity. The patient labour of Indian national leaders may be destroyed by the fissiparous tendencies. The Federal Legislature may counteract such movements and succeed in levelling down barriers which parochialism may erect for the maintenance of its prejudices and the preservation of its sectional programmes. The Muslim community will maintain its solidarity through all-India organisations, and, most important of all, through its representatives in the Federal Legislatures. While working steadily for the improvement of its position, it should never lose sight of the fact that the Communal Award is not the consummation of its endeavour but has been designed essentially for a period of transition, and that it is the duty of the Muslim community, no less than that of other communities, to explore all avenues for a lasting settlement. It is not an achievement of which any patriotic Indian can be proud, and the sooner it is replaced by an agreed settlement the better it would be for India as a whole. It is, however, essential that we should not force the pace, and no community should be compelled to do it against its will and wish.

How and when the Communal Award can be replaced.—It ought to be the aim of every Indian to replace the Communal Award by an agreed settlement. Separate electorates should not be regarded as an end in itself, but as a temporary measure designed to bring politically backward communities to the level of their fellow-citizens. The Muslim community can no longer remain indifferent to the astonishing progress which India has made during the last fifteen years in almost every sphere of activity, and its efforts should now be directed towards active cooperation in the supremely important task of nation-building. Indian nationalism is steadily welding different communities and classes into a powerful and self-reliant nation, and the process of consolidation has gone on with epic majesty. India is no longer a geographical abstraction, as is alleged by her detractors, and she can now speak with an authority and vigour which would have been deemed impossible a few years ago. Muslim India should set aside the trappings of separate electorates without avoidable delay, for the time has come when it must put forth its maximum energy into

the patriotic task of securing for India complete equality of status with other members of the British Commonwealth of Nations. Though ten years is a very short time in the life of a nation, if this interval is occupied with constructive plans for an agreed communal settlement on the one hand and national reconstruction on the other, there is every hope that before this period is passed, problems on which so much energy has been dissipated will be solved in a spirit of compromise.

Dawn of a New Era for India.—We are entering a new era in the history of our country. We shall soon witness the working of autonomous Provinces with areas and populations as large as the United Kingdom or France. For each Province there are innumerable social problems awaiting settlement. Is it not possible to concentrate all the energies of a powerful and virile nation on the achievement of a substantial progress in spheres which have hitherto been neglected owing to our preoccupation with the political problem? The Muslim community is peculiarly liable to periodic outbursts of feverish activity when the floodgates of religious passion are let loose, and the masses are sometimes carried away by policies which have wrought havoc in the past. In future it will contribute substantially to the task of nation-building by harnessing its energy to constructive work and patient building-up of a vigorous and virile State. The following lines are applicable to Indian communities as a whole:

> And as the morning steals upon the night,
> Melting the darkness, so their rising senses
> Begin to chase the ignorant fumes that mantled
> Their clearer reason.

New India will dismiss the controversies of the past with a contemptuous shrug of the shoulder, and proceed with the task of social reconstruction in a spirit of self-confidence and self-assurance. The Indian young men and women who are starting their life are impatient of the lumber of the ages which is sometimes represented as the quintessence of wisdom, and will make short work of those who oppose their path.

Depressed Classes.—The problem of the depressed classes is essentially social. They had hitherto been so overwhelmed in almost every Province that it was quite impossible for them even to think of their rights. The sympathetic treatment of this problem

by Sir John Simon greatly encouraged the growth of the new movement, and the spirit of resistance was particularly keen among persons who had risen in the social scale. It is not a new phenomenon in political history. Taine, the historian of the French Revolution, remarks in his *Ancien Régime* that the most serious opposition to the privileges of the French nobility proceeded, not from peasants who had become serfs and were utterly oblivious of everything except their vegetative existence, but from peasant-proprietors who were prosperous and had sufficient independence and energy to resist the cruelties and exactions of the French nobility. The new movement has thrown up a few able leaders, and its success in the present century is due mainly to their organising ability. They have immensely improved the position of their community by securing six seats in the Council of State and nineteen seats in the Federal Assembly. In the Provincial Legislative Assembly they may be able to make and unmake Ministries in certain Provinces, as they will have 151 members in Provincial Assemblies. If we compare the position assigned to them in the Act of 1919, when they were not given a single seat in any Legislature in India, and none had even heard of the political demands of harijans or scheduled castes, we are forced to acknowledge the rapidity of their progress and the success of their movement. Some of them may be appointed Ministers in a few Provinces, and if they are well organised and well led they may be able to maintain the balance of power among the different groups in Madras, Bengal and the Central Provinces. It is a moot point whether they will be able to secure a sufficient number of qualified men for the Legislatures. Again, the primary election, which will be confined to depressed classes, will be exceedingly costly and the expense will be multiplied in the final election, as candidates must canvass an unwieldy electorate consisting of thousands of caste Hindus and depressed classes. Their economic position is undoubtedly low, but their political status is bound to react on their economic and social progress in the future. Political power by itself cannot, however, eradicate the evils which are the result of thousands of years of inhuman treatment, and the movement must be carried on for a long time before social equality can be achieved. The future of the depressed classes is bright, as Hindu leaders of every section are genuinely working for the improvement of their lot. Mahatma Gandhi's

noble work for "harijans" has produced a deep impression upon Indians of all classes and the social conscience of the Hindu community has been deeply roused by the human disabilities from which they suffer. But the evils of centuries cannot be eradicated in a moment, and patience, combined with steady and persistent service, will gradually make them equal partners in the Indian social economy.

The movement has the support of every section in India, and depressed classes, or "harijans" as they are called, are now admitted to schools and other institutions. Many Provincial Governments have provided special facilities for their children. Scholarships have been reserved for depressed classes; while in local bodies in many Provinces their representatives are nominated by local Governments to many municipal and district boards. The importance which Mahatma Gandhi attaches to the harijan problem is borne out by the following moving words: "Without the removal of the taint of untouchability, *Swaraj* is a meaningless term. Swaraj is as inconceivable without full reparation to the 'Depressed' classes as it is impossible without real Hindu-Muslim unity. Untouchability is repugnant to reason and to the instinct of mercy, pity and love. No man can consider another man inferior to himself. He must consider every man as his blood brother. It is the cardinal principle of every religion. I do not desire to be born again, but if I am really born again, I desire to be born amongst the Untouchables so as to share their difficulties and to work for their liberation." What Mr. Gandhi saw of the Untouchables in Malabar and Orissa filled him with "the bitter cup of sorrow and humiliation". "Their poverty and degradation were", he cried, "our greatest shame."

CHAPTER XII

ORDERS IN COUNCIL

TRANSITIONAL ARRANGEMENTS

Transitory Provisions and Commencement of Part III of the Act.—As has been pointed out, the jejune and sketchy arrangements which His Majesty's Government embodied in proposal 202 of the White Paper were subjected to keen criticism by the Joint Select Committee. The Act could not be divided into watertight compartments, and the introduction of provincial autonomy was bound to influence the relationship of Provinces with the Centre on the one hand and the Secretary of State on the other. The new conception of provincial autonomy logically involved radical changes in the legislature and fiscal autonomy of the Provinces, and though Federation has not yet been established, and Part II of the Act is not likely to be enforced till 1938, when it is expected that a sufficient number of States will express their willingness to enter the Federation, the distribution of legislative powers between the Provinces and the Centre, in accordance with Schedule Seven of the new Act, must take effect immediately after the commencement of provincial autonomy. As the old legislative and fiscal subordination of the Provinces has been replaced by the new Federal conception of autonomy for the units, and the latter derive their authority from the new Constitution in precisely the same way as the Federal Legislature, it follows that the Secretary of State must divest himself of the power which he had hitherto exercised under the old Act, so far as the Provinces are concerned. His direct relations with the Governors therefore disappear. It is, of course, true that under section 314 (1) of the Act the Governor-General in Council and the Governor-General shall be "under the general control of, and comply with such particular directions, if any, as may from time to time be given by the Secretary of State", and the Governors of Provinces are, under section 54, in the exercise of their discretion or when acting on their individual judgment, under

the general control of the Governor-General, and are required to comply with such directions as may be given from time to time by the Governor-General. It may, therefore, seem that the change is merely one of form, as the Secretary of State will continue to exercise his control over Governors through the Governor-General. The fact remains that the direct control of the Secretary of State is abolished, and the Secretary of State loses all executive power in India and will have no direct relations with Governors.

New Organisms created.—The creation of new organisms with juristic personality and statutory powers which are precisely defined will bring into operation sections 172-73 of the new Act, and all lands and buildings which, immediately before the commencement of Part III of the Act, were vested in His Majesty for the purposes of government of India, will, as from that date, be redistributed between the Provinces and the Centre, and the power of the Secretary of State will be determined according to transitional provisions comprised in sections 312 and 319.

From the commencement of Part III of the Act on April 1, 1937, the salary of the Secretary of State and the expenses of the India Office, including the salaries and remuneration of the staff, are to be borne in British estimates. At the present time the India Office is a charge on the Indian estimates, with a subsidy of nearly £60,000 from the British Government.

Relation of the Centre with the Units.—The relations of the Centre with the new Provinces and its executive and legislative relationship will be determined on the jurisdiction listed in Schedule Seven. This is a change of great importance, as the Central Government in India, from time immemorial, has exercised almost unlimited power over the Provinces. Schedule Seven (reproduced in Appendix III to this book) demarcates the legislative and fiscal relations between the units and the Centre. The units will now derive their authority from the Constitution Act itself, and the principle of Federation will be in full force from that date. A Federal Court is a vital necessity for the determination of disputes between the Federation and its units, and section 318 has provided for its establishment before establishment of the Federation. The Order in Council on Commencement and Transitory Provisions lays down that the Federal Railway Authority and the Federal Court will be established on

such dates as His Majesty in Council may hereafter appoint. It is expected that the Federal Court will be established soon after Part III comes into force, and the Railway Authority by the end of 1937.

Dual Capacity of Viceroy.—On the same date on which Part III of the Act is brought into force, the Political Department will disappear from the Government of India, and the Central Legislature will be shorn of what little power it now possesses. Powers connected with the exercise of the functions of the Crown in its relations with Indian States shall, in India, if not exercised by His Majesty, be exercised only by, or persons acting under the authority of, His Majesty's representative for the exercise of functions of the Crown. The Viceroy will thus have a dual personality. He will exercise the executive authority of the Federation as Governor-General, and he will be His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States. The new institution created by the Act will be directly under the Viceroy, and his Executive Council will have no authority or power over the Political Department. It is likely to change its nomenclature, and will be designated as the Crown Department.

To put it briefly, the executive and legislative machinery in the Centre will remain much as it is at present, but the structure constructed by the Order in Council (Commencement and Transitory Provisions) dated July 3, 1936, will continue from April 1, 1937, to the establishment of the Federation. When the Federation is introduced and the States are brought into this structure, the Federal Legislature and the partly responsible Executive will replace the present Indian Assembly and the irresponsible Executive Council. The new Order in Council thus brings into operation the whole of the Act except Part II, Part VIII and Schedule Eight (which deal with the Federal Railway Authority), Chapter I of Part IX (Federal Court) and section 232 (Commander-in-Chief's salary).

The Order in Council thus sets in motion a machinery which has ramifications in every organ of the new body. It necessitates the establishment in the immediate future of the Federal Court, the Federal Railway Authority, and the Federal Public Service Committee. It postulates Federal units with legislative

powers precisely distributed between the Centre and the Provinces; it abolishes the direct control of the Secretary of State over the Provinces; it brings the Political Department under the exclusive charge of the Viceroy as representative of functions of the Crown and in its relations with the Indian States, and withdraws the latter from the jurisdiction of the executive Council of the Governor-General. It does something more. It brings into existence new Provincial Legislatures by enforcing Parts III and XII, and the Fifth and Sixth Schedules (dealing respectively with the composition of Provincial Legislatures and the Franchise) to the Act. All these provisions are brought into force from April 1, 1937. References in subsection (2) of section 68 of the new Act to the Federal Legislature will, during the period before the commencement of Part III of the Act, be construed as references to the Indian Legislature.

How the First Budget of the New Legislatures will be passed.—Before the first general elections to the Provincial Assemblies, the Governors will prorogue all Provincial Councils to April 1, 1937, and on the commencement of Part III of the Act, the latter will be dissolved. The new Provincial Assemblies will begin to function from April 1 next, and as the date coincides with the end of the financial year in all Provinces, Provincial budgets would have had to be passed by the present Councils. The position would certainly have been anomalous, and provision is accordingly made in the Order in Council whereby the Governor of each Province may, in his discretion, from time to time authorise such expenditure from the revenues of the Province as he deems necessary to carry on the business of the Provincial Government between the commencement of Part III of the Act and the date on which a schedule of authorised expenditure is authenticated in consonance with section 80 of the Act, or until the expiration of six months from the commencement of Part III of the Act, whichever first occurs. The expenditure thus authorised should not, except with the consent of the Governor-General in his discretion, exceed one-half of the total expenditure of the Province in the previous financial year. The Governor of each Province may continue for a period not exceeding twelve months any taxation which was being levied for the purpose of the Province and would otherwise expire. From April 1, 1937, all elected and

nominated members for Burma will vacate their seats in the Indian Assembly. The Advocate-General of the Federation will be appointed on the commencement of Part III. Provision is made for the auditing of accounts during the transition period.

Corrupt Practices.—Another Order in Council dated July 3, 1936, relates to corrupt practices at Provincial elections. It deals with:

(1) Electoral matters referred to under items (f), (g) and (h) of section 291 of the Government of India Act of 1935, which deal respectively with election expenses, corrupt practices and the decision of doubts and disputes arising from elections, and

(2) Declaring certain offences and practices which involve disqualification for membership of the Provincial Legislatures and fixing periods for which disqualifications are to operate under subsection (1) (d) of section 69 of the Act.

The draft order follows closely the existing Provincial electoral rules on these matters and the recommendations contained in the Hammond Committee's report. The following are the most important new features:

(1) The hiring of conveyances ceases to be a corrupt practice.

(2) The periods of disqualification, both for voting and membership, are extended from five and three years for major and minor offences to six and four years respectively, in consequence of the increased term of life of the new Legislatures.

(3) Either the Provincial Legislative or Governors' rules shall fix the maximum scale of election expenses and the number and description of persons who may be employed for payment, provided that this need not be done with respect to elections held within two years of the commencement of Part III of the Act.

(4) In presenting an election petition a petitioner can claim a declaration that he himself has been duly elected only on one or other of the following grounds:

(a) that he has received the majority of valid votes; or

(b) that but for the vote obtained for the returned candidate by corrupt practices he, the petitioner, would have obtained the majority of valid votes.

(5) The term "customary hospitality which did not affect the result of the election" is adopted in preference to definition of treating contained in the existing electoral rule relating to making void elections.

After dealing with the law regarding election agents and expenses, the Order passes on to deal with decision of doubts and disputes as to the validity of an election and disqualifications for corrupt practices.

An election petition against any returned candidate may be presented to the Governor—by any candidate or elector on any ground or by an officer empowered in that behalf by the Governor, exercising his individual judgment, on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed.

These petitions will be heard by Commissioners appointed by the Governor. If a person, not being entitled to do so, votes more than once at the same election, all his votes shall be deemed to be void.

The First Schedule of the Order enumerates corrupt practices as follows:

Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing:

(a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting.

For the purposes of this paragraph the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the return of election expenses prescribed by this Order.

Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right:

Provided that:

(a) without prejudice to the generality of the provisions of this paragraph, any such person as is referred to therein who:

(i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; or

(ii) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this paragraph.

The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

The removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent.

The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Order or of any Act of the Provincial Legislature or rules.

Part II states:

Any act specified in Part I of this Schedule, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

The application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

The receipt of, or agreement to receive, any gratification whether as a motive or a reward:

(a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return.

Part III specifies:

The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

The Achievements of Lord Linlithgow: a New Era.—This exposition of the new Orders in Council—relating to transitory provisions and commencement of Part III, and to corrupt practices at Provincial elections—shows the determination of His Majesty's Government to expedite the Reforms and introduce all parts of

the new Act with the least possible delay. The energy displayed by the Government of India and the India Office in pushing forward these measures of momentous importance is most commendable. The new Viceroy, the Marquess of Linlithgow, who landed in India on April 18, 1936, is largely responsible for this outburst of administrative and legislative vigour. Lord Linlithgow's chairmanship of the Joint Select Committee extorted the admiration of all who had the privilege of being associated with its patient investigations. His superb tact, great knowledge of India and the supreme qualities of statesmanship which he brought to bear in the handling of the infinitely complicated problems of the Indian Constitution, mark him out as one of the greatest administrators whom Britain has thrown up in the twentieth century. The new Viceroy has already infused new energy and vigour into the administration, and has signalised his régime by acts which have endeared him to the countless millions in our rural areas who constitute the basic element of our society. One of the greatest of constitutionalists, he disdains alike the pedantries of constitutional pundits and the logomachy of ideologues, and aims at political pacification and rural development. These two efforts are the core of his policy, and illustrate the new spirit and the new programme which the dawn of the new era in India has rendered imperative.

CHAPTER XIII

SURVEY OF NEW CONSTITUTION

THE new Constitution has failed to rouse the enthusiasm of most of the political organisations in India. Even the Indian Liberals were inclined at first to boycott it, and some of them have openly declared their preference for the Act of 1919. The Indian National Congress is definitely hostile and has made no secret of its implacable opposition. The Muslims, Europeans, depressed classes, and special interests, such as landlords, Indian commercial classes and others, will undoubtedly work it, but none who has been in touch with the current of political opinion in India since the Reforms of 1919 can deny that it is as difficult to work a Constitution without the help and support of a strong party of Hindu intelligentsia as it is impossible for the latter to become completely independent of these stable elements. Indian society may appear to a superficial observer to be rent in twain by a deep gulf between rural and urban classes, but to those who have lived and worked among these classes, nothing will be more striking and inspiring than the intensity and fervour of Indian Nationalism. For a long time it was the preserve of a select band of intellectuals; it has now become the treasure of the humble.

Balance of Various Forces.—No constitution can succeed in India unless it maintains an equipoise of forces and affords sufficient scope for the energy, ambition and aspirations of India as a whole. It is as difficult to maintain an administration based exclusively on the model of Venetian oligarchy, as it is impossible to work a scheme which derives its main support from the teachings of Karl Marx. A Constitution for India should exhibit two features: it should be based on the realities of the situation and it should contain the seeds of growth. If it reserves power to a particular class and creates a narrow oligarchy, it stands condemned. While it should be based mainly on experience it should contain the germs of development, growth and freedom. It should prepare the ground for Dominion status and formulate principles

which will rally our young men, infuse into them trust and confidence in the destiny of their motherland, and afford scope for the gradual progress of India to the position of complete equality with the self-governing dominions of the British Empire. The great leader of Indian Moderates, Mr. G. K. Gokhale, in addressing the Indian National Congress at Benares in 1905, gave a brilliant exposition of this policy.

"For better or worse", said Mr. Gokhale, "our destinies are now linked with those of England, and the Congress freely recognises that whatever advance we seek must be within the Empire itself. That advance, moreover, can only be gradual, as at every stage of progress it may be necessary for us to pass through a brief period of apprenticeship before we are enabled to go to the next one; for it is a reasonable proposition that the sense of responsibility required for the proper exercise of the political institutions of the West can be acquired by an Eastern people through practical training and experience only." These words were uttered by one of the greatest leaders of India. It may be conceded that they were undoubtedly expressed in a halting and hesitating manner, and some may think that his caution bordered on timidity. The pace of advance which Mr. Gokhale prescribed would be deemed exceedingly slow by the Moderate leaders of India to-day. The advance made by India during the last thirty years has been astonishingly rapid, and what would have satisfied the equanimity of Mr. Gokhale in 1905 would be rejected with scorn by the tamest and the most Moderate leader in India to-day. But the basic principle of Mr. Gokhale's testament to India is profoundly true. Home Rule in India is possible only within the Empire. She can reach her full stature and achieve her constitutional freedom by working for these ideals as a member of the great Commonwealth of Nations and adopting the principles and practice of constructive cooperation. A policy of direct action, physical force, mob violence and expropriation of land would be destructive of stability, security and tranquillity, and would bring in its train the evils of anarchy and communism. It would throw the land back into the morass from which it has taken her nearly a century to emerge. Constitutional government is far more effective in mobilising the moral resources and political instincts of a great and heroic people than political pyrotechnics and utopian schemes. Where a Maharatta

or an Afghan raider in the eighteenth century would lay waste a district and despoil it of the barest rudiments of civilisation, his modern prototype electrifies the whole country by superb achievements in the Legislatures. The one was destructive, brutish and bloody; the other is cooperative, constructive and beneficial.

Ideology and Experience.—The French Constitution of 1791, the experiments of Abbe Sieyès and the philosopher Locke in the congenial task of Constitution-making, the Weimar Constitution of 1919 and many "paper" Constitutions of South American republics in general and Mexico in particular, have disappeared like the morning mist and have become fit subjects for pleasant jests and acid comments among men of experience and sagacity. The framing of a Constitution may seem to be one of the easiest tasks with which anyone could be entrusted. But to those who have gone through the fiery ordeal the difficulties are enormous. For the real work of the framer consists not in deducing to its logical conclusion chains of reasoning based on a species of Hegelian dialectic, but in answering the inevitable question at every stage: Will this work? Will it satisfy the inner springs of our national character? It is not a piece of delicate and exquisite tapestry, in which every fabric must express artistic harmony. It rather resembles one of the numerous streams which, after emerging from the snow-clad gorges of the Himalayas, loses itself in unexplored ravines. Absorbed into the masses of our various communities and sections, it continues an obscure, though a steady course, whence it reappears at the psychological moment, and joins other streams which combine into a mighty river, and carries everything before it by the sheer force of its movement. Is it a practicable proposition? Will the new scheme rally round it a sufficiently large number of supporters to make it a success? The framers of old Constitutions knew what they were about. They built both with strength of design and strength of purpose, and their gaze was confined not to a distant, ethereal future, but to the immediate present. They did not copy slavishly the existing models, nor did they make it an exact replica of the crude and incomplete systems with which they were familiar. Had they done so, their Constitutions would, in Carlyle's expressive prose, have degenerated into *caput mortuum*. They would have lost flexibility, and all spontaneous development from within would have

been impossible. Their greatness lay in the combination of the two elements which ensured the success of their efforts: the intensity, variety and volume of their practical experience of administration and the sustained glow of their realistic idealism. Their vision pierced into the elemental goodness of their country. They suffused the variegated experience which they had acquired in the practical day-to-day problems of administration with a passion and a faith in the greatness and splendour of their country. They were engaged not in a petty or parochial occupation, but in the pious task of creating a new world on the solid foundations of the old. Even with these precautions they were by no means sure of the success of their efforts until they knew how it was worked. Benjamin Franklin was once asked by one of his townsmen whether they had designed a republic or a monarchy for the thirteen colonies of America; he replied, "Whatever you make of it". Precisely the same words may be applied to the new Constitution. It is true that it is an exceedingly "young" Constitution. It has not had time to settle into an environment, or the environment to take it to its bosom.

Special Considerations in India.—These general reflections are prompted by the special considerations which affect India. The new Constitution has slowly but steadily gained ground among a large and growing section of the Indian people. The Liberals have gradually modified their policy, and their attitude at Fyzabad, during Easter 1936 was expressed with sufficient clarity. They are naturally dissatisfied with it, as every section in India is dissatisfied. There is not a single party in India which praises the new Act. The Liberal Party has denounced it strongly. But the resolution passed by the party does not boycott it. On the contrary, it makes it clear that, defective as the new Constitution undoubtedly is, the party must work it for what it is worth, so that it may not fall into the hands of reactionaries and "careerists". The brilliant address which the selfless leader of the Indian National Congress delivered at Lucknow in April 1936 must not be regarded as expressing the deliberate view of that body. Had the Congress adopted the comprehensive programme outlined in the address, it would have split up into numerous fragments. Pandit Jawaharlal Nehru presented a programme which differs but slightly from the ideals and policy of the Russian Soviet.

Indian Political Parties and the Constitution.—Mr. Nehru criticised the Reformists, or Moderates, condemned British Imperialism, subjected the new Act to scathing criticism, and denounced the policy pursued during the last four or five years. Nobody can doubt the sincerity or question the integrity of a person whose life has been dedicated to the service of his motherland. The Congress, however, refused to accept the programme outlined by its president *in toto*. It was, indeed, clear to all that Pandit Jawaharlal Nehru expressed the views of a section in the Congress which had by no means secured a majority in its councils or deliberations. It was the voice, not of the Congress as a whole, but of Socialists inside the organisation. The resolution moved by Babu Rajendra Prasad, ex-president of the Congress, summed up the programme and policy of the Congress with admirable lucidity and moderation. The Act was denounced, but Communism was eschewed; the vexed question of office acceptance was postponed to a special meeting of a committee to be held after the elections, and outward unity was maintained by propounding a formula which would yield the greatest measure of agreement. The Congress has decided to contest the elections, and it is probable that in some Provinces such as the Central Provinces, Madras and Bihar, it may be able to secure a majority. In any case, boycott of new Councils has been avoided, and if the Congress accepts office, there is no reason why it should not use the new Act to increase its power in the Provinces.

His Highness the Aga Khan formulated a brilliant programme for Muslims at a meeting of the Executive Board of the Muslim Conference on February 16, 1936. The programme was confirmed at the session of the Conference held in Delhi a few weeks later. It is a dynamic programme, and Indian Muslims are called upon to use the new Act in cooperation with other communities in India. Other Muslim organisations have followed practically the same policy. The meeting of the Muslim League held at Bombay exhorted the Muslims to use the part of the Act dealing with the introduction of reforms in the Provinces. It rejected the scheme of All-India Federation.

Every political organisation in India has now decided to contest elections to the Provincial Legislatures, and the centre of gravity has shifted to acceptance of office by these parties. There is indeed

a strong section in the Congress which is desirous of wresting power from the hands of "undesirable people" and establishing its supremacy in many Provinces. Had the Congress decided to enter the Reformed Legislatures in 1920 and accept office, the political situation in India would have immensely improved. She would not have had to go through the agony, suspense and vacillation of incompetent, inefficient and subservient Ministries in certain Provinces on the one hand, and the sterility, fatuity and confusion of civil disobedience on the other. The insurgence of all classes, swelling upward from the lowest, and the allurements of an exaltation shared by thousands, drove on the most powerful organisation in India to a policy which, after fifteen years of tedious discussion, has proved to be pathetically barren. Even the bureaucratic régime could have been insensibly affected by the deeper intercourse and greater understanding between the majority party and the administrative system. There would have been no impenetrable barriers between the two, and the constructive contribution of the patriotic and far-sighted class of intelligentsia, which was unhappily divided in 1920 into Liberals, Congressmen and the mixed grill, would have been made with a concentrated purpose and energy. This would have transmuted even the most unpromising and barren programme into fruitful and beneficial centres of activity. As a result of the ploughing of sands by the Congress, the intelligentsia practically disappeared from most of the Governments of the Provinces after 1923, and political energy and ability were concentrated in opposition to the administration in the Central and Provincial Legislatures. The Punjab and Bengal were undoubtedly an exception, but it will be true to say that the enormous resources of our ability, vitality and personality were dissipated in the pursuit of a will-o'-the-wisp.

The prospects of the new Constitution are undoubtedly brighter, and the atmosphere for its working is more favourable than that of its predecessor in 1920. Then the Muslim community was opposed to Reforms, the special interests had not attained self-consciousness, and India was seething with excitement for which there is no parallel in this century. It must be admitted that the Act has few defenders, and the way in which safeguards and special responsibilities have been piled up makes it impossible

for any party in India to support it as it stands. Even the moderate demands of Indian delegates to the Joint Select Committee were brushed aside, and the House of Commons agreed to a number of amendments which stultified many provisions of the new Constitution. To begin with, Defence and External Relations are reserved subjects, while the functions of the Crown in the sphere of paramountcy leave a reserve of power to which there is, and can be, no limit. These are, from many points of view, the departments upon which the honour, dignity, nay the existence, of any State depends. Without them the nation is a helpless spectator of the invasion of its sacred soil, and negotiations that may make or mar her destiny are conducted by persons who are not responsible to her Parliament for their effects on her trade, her self-respect and her proud manhood. She has no control over her army and no time-limit has yet been fixed which will give her an assurance, nay a guarantee, of Home Rule in the army.

Again, the Indian States will conduct their general policy in the non-Federal sphere, according to the fluid and intangible laws and conventions of paramountcy; and British India must watch from a safe and sanitary distance with painful curiosity and pathetic resignation the absence of successful movements for responsible government in such States. The Constitution gives no power to the Legislatures to change these arrangements, or modify their details.

Criticism of the New Constitution.—Again, the reserved departments are immune from the Federal Legislature, for though the latter may discuss certain aspects of his policy the primary responsibility is that of the Governor-General. When the question is viewed from the point of finance, still greater anomalies stare us in the face. Sections 33-37 of the new Act, which deal with the procedure of the Federal Legislature in financial matters, implement this irresponsibility in the financial domain and authorise the Governor-General to appropriate nearly two-thirds of the revenues of British India for expenditure on these departments, as well as on other matters for which he has special responsibility. The Legislature has no authority and no competence to vote them, and they are charged on the revenues of India.

Again, the Governor-General has been given substantial power to implement his responsibility in the legislative sphere.

We may sum up the position by saying that the Governor-General has power in the administrative, financial and legislative spheres in respect of reserved departments, as well as in matters for which he has special responsibility, on a scale which will render it most difficult for India to attain the status and exercise the functions of a dominion within a reasonable amount of time.

Though a number of important subjects have been transferred and placed in charge of Ministers who will be responsible to the Federal Legislature, they are so elaborately fenced round by safeguards and other ingenious devices that it will be difficult for a Minister to move freely and safely through this labyrinth and formulate a policy that will offer opportunities for the free and unhampered exercise of our national ability and energy. Ministers can be checked and controlled at almost every turn and their cherished plans might be thwarted by the *idée fixe* of a stubborn counsellor or a financial adviser steeped in theory and vanity. The special responsibility of the Governor-General will pervade every department of Government, and no subject will be free from it. It is not a special department concerned exclusively with the legislation or administration of a specific subject, but a power or faculty whereby the Governor-General is empowered to put his fiat on any matter which trenches, either directly or indirectly, upon his authority as specified in the Act.

Again, the Legislature is so curiously composed and its procedure is so ingeniously contrived that it will find it difficult to function freely and independently. It will be destitute of organic unity, will lack the momentum of a common allegiance and national solidarity, and may resolve itself into congeries of inconsistent and even destructive sections, lacking the rudiments of leadership and team-work, and exhibiting all the characteristic features of the Federal Parliament of Austria-Hungary before the war. It will not be a national assembly but a confederation of Indian States and Provinces, a miniature League of Nations.

Defects in the Provinces.—The critics of the Constitution have not spared the Provincial Constitution. They are shrewd enough to admit the great strides the new Constitution makes in the Provincial domain, and have not disguised their admiration for the Joint Select Committee for its courage, determination and initiative in transferring police to Indian Ministers. But they point

out the serious inroads which the new Act makes on provincial autonomy. They assert that second Chambers are not a necessity but an encumbrance. They were not wanted in Bengal, Bihar, Assam, Madras or Bombay, and their establishment in Provinces where there is no keen or genuine demand is likely to lead to deadlocks which may be utilised by certain parties for rendering the new machinery unworkable.

While provincial autonomy has been conceded and Ministers will be theoretically responsible for the administration of their departments, the powers of Governors have been so greatly increased that a Minister with average ability and personality—and some Ministers in the past have been courtiers rather than leaders of their parties—will be powerless in the hands of an able and vigorous Governor. The departments will be administered by the Minister in name, and by other influences and forces in fact. The critics further allege that the quantity and quality of provincial autonomy that has been conferred has been whittled down to such an extent that it is hardly distinguishable from the diarchy on which political parties for the last fifteen years poured the vials of their wrath. Provinces have gained from the distribution of legislative power between the units and the Federation, and this is undoubtedly one of the most constructive and far-reaching contributions of the new measure to the solution of India's difficult problem. But, the critics point out, the reform has stopped half-way, as concurrent subjects have been introduced by the back door and provincial autonomy has emerged battered and mutilated.

In the sphere of finance, the fond hopes and expectations amidst which Lord Peel first launched his fragile bark on the turbid ocean have disappeared, and the original recommendations have been practically discarded by a succession of Committees which visited India or worked in London. The Niemeyer Report has promised half the proceeds of income tax. It ought to have guaranteed three-fourths of the proceeds. Only thus could the success of the new experiment be assured in the Provinces. The Provinces are now left with the beggar's bowl and have to beg for alms from door to door. Half of the proceeds of income tax has slipped away from their grasp, and their finances will present a more dreary and doleful sight than they did in 1920 on the eve of

the last Reforms. Their bankruptcy is inevitable, and this will play into the hands of the discontented elements. In the administration there has been little change, and the two key services will maintain their ascendancy with their accustomed vigour and persistence. There can be no genuine provincial autonomy without control over the services, and the anomalous and illogical position which has been a fruitful source of misunderstanding in the past will be perpetuated. It will provide recurring causes of irritation and suspicion between Ministers and executive heads of their departments, and will clog the wheels of the administrative machinery.

An Impartial View necessary.—I have deemed it necessary to summarise the chief objections which are urged by critics to the new Act. It is essential that the view-points of honest and candid critics should be clearly understood, as they form the nuclei around which agitation against the new Act will gather. It is perfectly easy to pick up one or two provisions of a comprehensive measure and subject them to destructive criticism. Such provisions cannot possibly be defended on logical principles, and if the ideology and *a priori* reasoning are the only criteria in the determination of such measures, then a great part of the Act must be condemned without the least hesitation. While the canons of logic adumbrated by Duns Scotus and William of Ockham may have been perfectly valid in medieval times, they are utterly useless in the evolution of a fundamental instrument of government for a country like India. Speculation in politics may be worthy of the highest praise if it remains within the safe seclusion of the cloister, but if it assumes the form of a "dogma", and is afterwards armed with power, it becomes the most potent instrument of evil. Had India been in a position to build up her army and maintain her officer class in the height of her power and influence, the disabilities which her governing class has endured during the last hundred years would never have arisen. But Indians were completely eliminated from higher commissioned ranks in the army, and this has deprived her of a class of leaders whose initiative and energy have invariably imparted success to all national movements. She has only just begun to recover the lost ground, and it will take her a long time to attain even a respectable proportion in the commissioned ranks. She has undoubtedly some of the finest material for the officer class in the world, but it has not yet been

adequately or effectively tapped. Consequently she is not prepared to undertake her defence on land and at sea single-handed. She will continue to progress at an exceedingly slow pace so long as she is denied her minimum quota in defence services. Once this is achieved, Dominion status will be a reality. Unless this is done, Dominion status will either be a farce or tragedy, or both.

The Dominions, it is true, have a certain amount of control over the conduct of foreign policy, but this control is much circumscribed by coordination with the main currents of Imperial policy, and it is difficult to distinguish a purely Canadian from a truly Imperial policy on foreign affairs. An Indian foreign policy, independent alike of the foreign policy of the Empire and of Britain's foreign policy in India, is impossible in her present political position. Even if she is given a free hand in directing her foreign policy, she will find that her representations, protests and negotiations with foreign Powers have neither the necessary sanctions nor the requisite national energy behind them. Governments in Asia, including Afghanistan and Japan, will deal with them in a cavalier way, and as diplomacy without power, prestige and force is futile and inane, she will have to confine herself to paper protests, or request Britain to come to her rescue.

So far as Indian States are concerned, it is inconceivable that the Crown should abdicate its functions and transfer its powers of paramountcy to the Federal Executive without the consent of Indian States. The latter have unequivocally and unhesitatingly opposed such action.

Difficulties of Indian Ministers in Provinces and at the Centre.—In the sphere of transferred subjects, it must be admitted that too many restrictions have been imposed on the policy and administration of Ministers. The protests of the British Indian delegation, couched in the most moderate language, received little attention, and safeguards have been piled up in a bewildering manner. Indian opinion on commercial discrimination, safeguards, composition and powers of Legislatures, and other matters which have aroused fierce controversy in the past, has not been adequately consulted in the formulation of some of the sections of the Act. The Act has been encumbered with a series of safeguards, which, if frequently exercised, will render constitutional government extremely difficult.

In the Provincial sphere, too, the liberality that characterised the original scheme of Indian Federalism in 1930 was gradually modified and Governors have been invested with powers which few members of the Provincial Constitution Committee of the First Round Table Conference could concede. Though the police have been placed in charge of Indian Ministers, the powers of the Governor and the Inspector-General of Police are so vast, and the expression, "peace and tranquillity of the Province", is so vague, that the Governor will be justified in taking over the entire administration of the Police Department on critical occasions. Again, the Provincial financial system has emerged from a series of Committees in a way that is hardly distinguishable from the present inelastic system, and the Niemeyer Report has not succeeded in endowing Provinces with adequate resources. The serious repercussions of a scheme wherein Provincial Ministers have no effective control over the members of Indian Civil and Police services need not be emphasised here. While it must be admitted that relations between Ministers and their Secretaries have been on the whole satisfactory since the Reforms, there is no guarantee that this will continue in future. The maintenance of such relations depends entirely upon the type of men who are at the head of Provincial administrations. If a clash occurs between the Ministry and members of the services, a serious crisis may develop in a Province, and the subject may become the sport of party politics.

The Goal of Dominion Status.—It is regrettable that Dominion Status is not explicitly announced to be the goal of India in a preamble to the Act. This lack has tended to alienate the support even of Moderate Indians. The educated classes have so far been responsible for promoting and working constitutional advance in India. The question is asked: Will not autocracy in Indian States, by allying itself with the bureaucracy in India, effectively dam the stream which has fertilised Indian aspirations, and develop a new spirit in the land? India's right to Dominion Status cannot be taken away after its formal and explicit recognition when India took her place at the Imperial War Cabinet of 1917 and at the War Cabinet and Conference of 1918. The Imperial War Conference recognised the desirability of the readjustment of the constitutional relations of the various parts of the Empire "based upon a full recognition of the Dominions as autonomous members of an Imperial Common-

wealth and of India as an important portion of the same". Nor was this all. The Conference recognised the right of the Dominions and India to an adequate voice in foreign policy. It gave practical expression to these views by accepting the principle of reciprocity of treatment between India and the Dominions. Further, India was treated as a Dominion in 1919, and was given separate membership of the League of Nations.

Lord Irwin's announcement in October 1929, on behalf of His Majesty's Government, that the natural issue of India's constitutional progress as contemplated in the Declaration of 1917 was the attainment of Dominion Status, was in conformity with the previous declarations of the British Government. Lord Willingdon reaffirmed this goal. Attempts since made to explain away the significance of these statements and to whittle down their importance have been singularly ineffective. The declarations of British policy are clear as crystal, and India regards them as binding. But the Government has maintained a mysterious silence and consistently refused to embody the principle in the Act. The omission has produced an unfavourable effect on the Indian mind, for it implies a violation of a pledge solemnly given on various occasions and shows distrust of India.

The constitutional position of India is clear. She stands by the resolution of the Imperial War Conference of April 13, 1917: her membership of the League of Nations is a concrete expression of that resolution; while the declaration of Lord Irwin in October 1929, on behalf of His Majesty's Government, is an explicit and authoritative interpretation of that pledge. Neither the logomachy of Mr. Winston Churchill nor the studious avoidance of the phrase in the Act of 1935, can restrict, abridge or modify in any shape or form the full import and significance of the undertakings which have been given.

Glaring Defects of the Act.—The defects of the Act are glaring, and there are few representative persons or parties in India who regard it as an ideal. It has not realised the expectations even of those who had supported the outline of the new Constitution framed by the First Round Table Conference. The spade-work done by successive Committees and Conferences accentuated features which had been deliberately left elastic by the framers of 1930, and the theory of safeguards has crystallised in the Act in

forms which many persons believe to be shackles on the growing nationalism of the country. It is true that some safeguards are reserved in all governments for the smooth working of administrative machinery; and it can hardly be denied that all Constitutions recognise in some form or other the imperative necessity of arming the executive head with a reserve of power in emergencies. But the cumulative effect of an array of massive safeguards bulging aggressively out of the voluminous Act is simply overwhelming. This is no disparagement of the work of the committees and conferences that succeeded the memorable First Round Table Conference. When the work of the British Indian delegation is impartially reviewed, it will be found that they left no stone unturned to improve the position of their country by expressing her ideals and programme on all proper occasions.

Constitution must be taken as a Whole.—The Act must be taken as a whole, and an estimate should be formed of its general effect on India. Viewed from this aspect, it must be declared a great improvement on the present Constitution. For the first time in the history of India during the last two thousand years, it introduces responsibility in the Central Government and complete autonomy in the Provinces. This is a noble achievement, and none who has worked in any Indian Legislature can help being struck by the magnitude of the task which lies ahead of all of us. It offers great opportunity for constructive work in the Provinces. The youth of India must no longer be content to resign itself to fate and bear the calamities of nature with pathetic passivity. The nation is pulsating with a new life and a new energy. It has become conscious of its destiny and resents opportunities missed and lives unfulfilled. This uprising of human spirit may burst its banks, or it may be controlled and let into useful channels to irrigate and revivify the motherland. Provincial autonomy will give free scope for the constructive ability of our leaders and the concentrated efforts of our young men. Education, sanitation, medical relief and other activities which mould a nation will be in the hands of Indian Ministers responsible to Legislatures. The policeman with a big truncheon has hitherto been regarded as the personification of an oversea Government. He will now obey the orders and carry out the policy of an Indian Minister who will be answerable to the Provincial Legislature for his administration. For the first time in the history of this land, a

Chief Minister will guide the destinies of Provinces greater in area and population than the United Kingdom, and the Indian masses will wield a power and exercise a franchise which would have been deemed incredible a dozen years ago. The political training they will receive from the enormous increase in the franchise, the impetus to social movements which the women's vote will inevitably impart and the raising of our political and intellectual standards which will result from an all-round improvement in literacy, intelligence and sanitation, will bring about a social revolution of which few have yet formed a clear idea.

Central Responsibility.—Nor should the advance at the Centre be despised. Indian Federalism realises the dream of our great emperor, Akbar the Great, and unites, for the first time, parts of India which a variety of circumstances had kept apart. The rising tide of nationalism, which expresses in many ways the fundamental unity of this noble land, will smash the artificial barriers of engagements and agreements and create a greater India, proud of her magnificent contributions to culture, administration and religion, and inspired with a firm faith in her future. India will arise like Phoenix from her ashes and will again show to the world, as she has done on numerous occasions in the past, that she is capable of rising to her full stature among the nations of the world and achieving complete Dominion status by the energy and ability of her sons.

How should Safeguards be worked?—The safeguards need not frighten us. No wise Governor-General will make the egregious blunder of regarding the medicine of the Constitution as his daily food. He will act as Lord Elgin did in Canada in the fifties of last century. He will call his Counsellors and Ministers together, and tell them that for them there is only one Government, the unitary Government in the Federal Centre. He will treat them as a united team each working in his own sphere and all uniting on the formative framework of national policy and programme. If a Governor-General is so foolish as to stand strictly on his rights, he will find that his whole Government will topple down. The Constitution does not require pettifogging attorneys, but statesmen with a broad vision and generous sympathies, and a capable team, driven by an enlightened Governor-General, will work wonders and will prepare India for complete equality with

other members of the British Commonwealth of Nations in an exceedingly short time.

The atmosphere in the country has now cleared and omens are more favourable than they have been for years. I feel convinced that the new Constitution will be used by many responsible and representative organisations in India for what it is worth, and the possibility of breakdown in most Provinces is remote. The machinery will need oiling now and then, but when once set on wheels it will run smoothly and without friction.

The charge is often levelled that the new Constitution falls short of the expectations of Indians of all shades of opinion. This is perfectly true, and those who have attempted to defend every section of the Act are more distinguished by their zeal and enthusiasm than by their intelligence or knowledge of this country. The only effective reply to this charge is to be found in the infinitely complicated nature of the problem with which the framers of the Constitution were faced. It is not an ideal Constitution, constructed on the models of Plato, Aristotle or even Abbé Sieyès, but a severely practical scheme based essentially on experience.

Difficulties of Constitution-making.—David Hume, a great historian and philosopher, put the truth in a nutshell in his brilliant essay, *Rise of Art and Sciences*: "To balance a large state or society, whether monarchical or republican, on general laws is a work of so great difficulty that no human genius, however comprehensive, is able by mere dint of reason and reflection to effect it. The judgments of many must unite in the work; experience must guide their labour; time must bring it to perfection; and the feeling of inconveniences must correct the mistakes into which they inevitably fall in their first trials and experiments."

The same profound truth was expressed by the poet Browning in the noble lines:

> The common problem, yours, mine, everyone's,
> Is not to fancy what were fair in life
> Provided it could be, but first finding
> What may be, then find how to make it fair
> Up to your means—a very different thing.
> No abstract intellectual plan of life,
> Quite irrespective of life's plainest laws,
> But one, a man, who is man and nothing more,
> May lead within this world.

APPENDIX I

THE AREA AND POPULATION OF BRITISH INDIA

(Reproduced from the Hammond Committee Report on Delimitation of Constituencies)

THE figures of area and population contained in the following statement are taken, so far as available, from the Reports received from the Local Governments. In certain cases the figures have been taken from the Census Tables of 1931.

The figures of area shown against individual Provinces do not take into account those areas expected to be classed as excluded and partially excluded areas.

Name of Province	Area, sq. miles	Total Population	General, including Scheduled Castes	Scheduled Castes	Muhammadans	Anglo-Indians	Europeans	Indian Christians
India (excluding Burma and Aden)	1,575,107	338,119,154	238,622,602	50,250,347	77,049,868	119,143	274,029	5,570,240
British India (excluding Burma and Aden)	862,599	256,808,309	177,175,450	39,137,405	66,392,766	101,380	238,592	3,193,337
Madras	126,663	44,183,690	39,083,342	6,944,747	3,290,294	28,630	12,341	1,703,791
Bombay	77,221	18,192,475	15,602,932	1,673,896	1,602,385	14,176	18,028	267,460
Bengal	72,514	50,114,002	22,493,659	9,124,925	27,497,624	27,573	20,895	129,134
The United Provinces	106,248	48,408,763	40,905,586	12,591,525	7,181,927	11,263	22,043	170,216
The Punjab	91,919	23,551,210	6,328,415	1,440,750	13,302,991	2,995	19,106	392,144
Bihar	69,348	32,371,434	28,194,621	4,490,599	4,140,327	5,892	5,390	331,185
The Central Provinces and Berar	99,920	15,507,723	14,815,054	2,927,343	682,854	4,740	5,075	35,531
Assam	27,572	8,214,076	4,858,779	572,490	2,753,563	558	2,961	117,200
The North West Frontier Province	13,518	2,425,003	142,977	..	2,227,303	150	7,947	4,116
Orissa	32,681	8,174,251	8,043,018	1,006,983	131,233	635	856	36,573
Sind	46,378	3,887,070	1,015,225	99,551	2,830,800	1,930	6,576	6,627

Backward Tribes	Bihar	3,855,076
	Assam	470,093
	Orissa	1,174,534
Tribal religions	Bengal	528,037
Sikhs	Punjab	3,064,144
	North West Frontier Province	42,510
Mahrattas	Bombay	6,664,560

Note.—Scheduled Castes were formerly designated as Depressed Classes.

APPENDIX II

TABLES OF SEATS

PROVINCIAL LEGISLATIVE ASSEMBLIES

(1)	(2)	(3) General Seats	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15) Seats for Women	(16)	(17)	(18)	(19)
Province	Total Seats	Total of General Seats	General Seats reserved for Scheduled Castes	Seats for Representatives of Backward Areas and Tribes	Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for Representatives of Commerce, Industry, Mining and Planting	Landholders' Seats	University Seats	Seats for Representatives of Labour	General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
Madras	215	146	30	1	..	28	2	3	8	6	6	1	6	6	..	1	..	1
Bombay	175	114	15	1	..	29	2	3	3	7	2	1	7	5	..	1	..	..
Bengal	250	78	30	..	..	117	3	11	2	19	5	2	8	2	..	2	..	..
United Provinces	228	140	20	..	..	64	1	2	2	3	6	1	3	4	..	2	..	..
Punjab	175	42	8	..	31	84	1	1	2	1	5	1	3	1	1	2	..	..
Bihar	152	86	15	7	..	39	1	2	1	4	4	1	3	3	..	1	..	..
Central Provinces and Berar	112	84	20	1	..	14	1	1	..	2	3	1	2	3	..	..	..	..
Assam	108	47	7	9	..	34	..	1	1	11	..	..	4	1	..	..	..	..
North West Frontier Province	50	9	..	..	3	36	..	..	..	..	2	..	..	..	..	..	..	..
Orissa	60	44	6	5	..	4	..	..	1	1	2	..	1	2	..	..	..	..
Sind	60	18	..	..	..	33	..	2	..	2	2	..	1	1	..	1	..	..

In Bombay seven of the general seats shall be reserved for Mahrattas.
In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar.
In Assam and Orissa the seats reserved for women shall be non-communal seats.

PROVINCIAL LEGISLATIVE COUNCILS

(1) Province	(2) Total of Seats	(3) General Seats	(4) Muhammadan Seats	(5) European Seats	(6) Indian Christian Seats	(7) Seats to be filled by Legislative Assembly	(8) Seats to be filled by Governor
Madras . . .	Not less than 54 Not more than 56	35	7	1	3	..	Not less than 8 Not more than 10
Bombay . .	Not less than 29 Not more than 30	20	5	1	..	..	Not less than 3 Not more than 4
Bengal . . .	Not less than 63 Not more than 65	10	17	3	..	27	Not less than 6 Not more than 8
United Provinces .	Not less than 58 Not more than 60	34	17	1	..	..	Not less than 6 Not more than 8
Bihar . . .	Not less than 29 Not more than 30	9	4	1	..	12	Not less than 3 Not more than 4
Assam . . .	Not less than 21 Not more than 22	10	6	2	..	..	Not less than 3 Not more than 4

THE COUNCIL OF STATE

Representatives of British India

(Distribution of Seats for Purposes of Triennial Elections)

(1)	Number of Seats to be filled originally for Three Years only					Number of Seats to be filled originally for Six Years only					Number of Seats to be filled originally for Nine Years				
Province	(2) General Seats	(3) Seats for Scheduled Castes	(4) Sikh Seats	(5) Muhammadan Seats	(6) Women's Seats	(7) General Seats	(8) Seats for Scheduled Castes	(9) Sikh Seats	(10) Muhammadan Seats	(11) Women's Seats	(12) General Seats	(13) Seats for Scheduled Castes	(14) Sikh Seats	(15) Muhammadan Seats	(16) Women's Seats
Madras	..	..	..	..	..	7	..	..	2	1	7	1	..	2	..
Bombay	5	..	..	2	1	..	..	..	..	..	5	1	..	2	..
Bengal	4	1	..	5	..	..	..	..	..	..	4	..	..	5	1
United Provinces	5	1	..	3	1	6	..	..	4	..	..	..	..	..	..
Punjab	2	..	2	4	..	1	..	2	4	1	..	..	..	..	..
Bihar	..	..	..	..	..	5	1	..	2	..	5	..	..	2	1
Central Provinces and Berar	..	..	..	..	..	6	1	..	1	..	..	..	..	..	..
Assam	..	..	..	..	..	3	..	..	2	..	..	..	..	..	..
North West Frontier Province	..	..	..	..	..	..	..	..	..	..	1	..	..	4	..
Orissa	4	..	..	1	..	..	..	..	..	..	..	..	..	..	..
Sind	2	..	..	3	..	..	..	..	..	..	..	..	..	..	..
British Baluchistan	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..
Delhi	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..
Ajmer-Merwara	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..
Coorg	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..
Totals	22	2	2	18	2	28	2	2	15	2	25	2	..	16	2

THE FEDERAL ASSEMBLY

REPRESENTATIVES OF BRITISH IND

(1)	(2)	(3) General Seats	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Province	Total Seats	Total of General Seats	General Seats reserved for Scheduled Castes	Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for Representatives of Commerce and Industry	Landholders' Seats	Seats for Representatives of Labour	Women's Seats
Madras . . .	37	19	4	..	8	1	1	2	2	1	1	2
Bombay . .	30	13	2	..	6	1	1	1	3	1	2	2
Bengal . . .	37	10	3	..	17	1	1	1	3	1	2	1
United Provinces .	37	19	3	..	12	1	1	1	..	1	1	1
Punjab . . .	30	6	1	6	14	..	1	1	..	1	..	1
Bihar . . .	30	16	2	..	9	..	1	1	..	1	1	1
Central Provinces and Berar . . .	15	9	2	..	3	..	..	..	..	1	1	1
Assam . . .	10	4	1	..	3	..	1	1	..	..	1	..
North West Frontier Province . .	5	1	..	..	4	..	..	..	..	..	..	..
Orissa . . .	5	4	1	..	1	..	..	..	..	..	..	..
Sind . . .	5	1	..	..	3	..	1	..	..	..	..	..
British Baluchistan .	1	..	..	..	1	..	..	..	..	..	..	..
Delhi . . .	2	1	..	..	1	..	..	..	..	..	..	..
Ajmer-Merwara .	1	1	..	..	..	..	..	..	..	..	..	..
Coorg . . .	1	1	..	..	..	..	..	..	..	..	..	..
Non-Provincial Seats	4	..	..	..	..	..	..	..	3	..	1	..
TOTALS .	250	105	19	6	82	4	8	8	11	7	10	9

THE COUNCIL OF STATE

Representatives of British India

(Allocation of Seats)

(1) Province or Community	(2) Total Seats	(3) General Seats	(4) Seats for Scheduled Castes	(5) Sikh Seats	(6) Muhammadan Seats	(7) Women's Seats
Madras	20	14	1	..	4	1
Bombay	16	10	1	..	4	1
Bengal	20	8	1	..	10	1
United Provinces	20	11	1	..	7	1
Punjab	16	3	..	4	8	1
Bihar	16	10	1	..	4	1
Central Provinces and Berar	8	6	1	..	1	..
Assam	5	3	..	..	2	..
North West Frontier Province	5	1	..	..	4	..
Orissa	5	4	..	..	1	..
Sind	5	2	..	..	3	..
British Baluchistan	1	..	..	..	1	..
Delhi	1	1	..	..	..	..
Ajmer-Merwara	1	1	..	..	..	..
Coorg	1	1	..	..	..	..
Anglo-Indians	1	..	..	..	..	..
Europeans	7	..	..	..	..	..
Indian Christians	2	..	..	..	..	..
Totals	150	75	6	4	49	6

THE COUNCIL OF STATE AND THE FEDERAL ASSEMBLY

Representatives of Indian States

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Federal Assembly	(5) Population
		Division I		
Hyderabad	5	Hyderabad	16	14,436,148
		Division II		
Mysore	3	Mysore	7	6,557,302
		Division III		
Kashmir	3	Kashmir	4	3,646,243
		Division IV		
Gwalior	3	Gwalior	4	3,523,070
		Division V		
Baroda	3	Baroda	3	2,443,007
		Division VI		
Kalat	2	Kalat	1	342,101
		Division VII		
Sikkim	1	Sikkim	..	109,808
		Division VIII		
1. Rampur	1	1. Rampur	1	465,225
2. Benares	1	2. Benares	1	391,272
		Division IX		
1. Travancore	2	1. Travancore	5	5,095,973
2. Cochin	2	2. Cochin	1	1,205,016
3. Pudukkottai Banganapalle Sandur	1	3. Pudukkottai Banganapalle Sandur	1	400,694 39,218 13,583
		Division X		
1. Udaipur	2	1. Udaipur	2	1,566,910
2. Jaipur	2	2. Jaipur	3	2,631,775

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Federal Assembly	(5) Population
		Division X—*cont.*		
3. Jodhpur	2	3. Jodhpur	2	2,125,982
4. Bikaner	2	4. Bikaner	1	936,218
5. Alwar	1	5. Alwar	1	749,751
6. Kotah	1	6. Kotah	1	685,804
7. Bharatpur	1	7. Bharatpur	1	486,954
8. Tonk	1	8. Tonk	1	317,360
9. Dholpur	1	9. Dholpur	1	254,986
10. Karauli	1	Karauli		140,525
11. Bundi	1	10. Bundi	1	216,722
12. Sirohi	1	Sirohi		216,528
13. Dungarpur	1	11. Dungarpur	1	227,544
14. Banswara	1	Banswara		260,670
15. Partabgarh	1	12. Partabgarh	1	76,539
Jhalawar		Jhalawar		107,890
16. Jaisalmer	1	13. Jaisalmer	1	76,255
Kishengarh		Kishengarh		85,744
		Division XI		
1. Indore	2	1. Indore	2	1,325,089
2. Bhopal	2	2. Bhopal	1	729,955
3. Rewa	2	3. Rewa	2	1,587,445
4. Datia	1	4. Datia	1	158,834
5. Orchha	1	Orchha		314,661
6. Dhar	1	5. Dhar	1	243,430
7. Dewas (Senior)	1	Dewas (Senior)		83,321
Dewas (Junior)		Dewas (Junior)		70,513
8. Jaora	1	6. Jaora	1	100,166
Ratlam		Ratlam		107,321
9. Panna	1	7. Panna	1	212,130
Samthar		Samthar		33,307
Ajaigarh		Ajaigarh		85,895
10. Bijawar	1	8. Bijawar	1	115,852
Charkhari		Charkhari		120,351
Chhatarpur		Chhatarpur		161,267
11. Baoni	1	9. Baoni	1	19,132
Nagod		Nagod		74,589
Maihar		Maihar		68,991
Baraundha		Baraundha		16,071
12. Barwani	1	10. Barwani	1	141,110
Ali Rajpur		Ali Rajpur		101,963
Shahpura		Shahpura		54,233
13. Jhabua	1	11. Jhabua	1	145,522
Sailana		Sailana		35,223
Sitamau		Sitamau		28,422
14. Rajgarh	1	12. Rajgarh	1	134,891
Narsingarh		Narsingarh		113,873
Khilchipur		Khilchipur		45,583

(1) States and Groups of States	(2) Number of Seat in Council of State	(3) States and Groups of States	(4) Number of Seats in the Federal Assembly	(5) Population
		DIVISION XII		
1. Cutch	1	1. Cutch	1	514,307
2. Idar	1	2. Idar	1	262,660
3. Nawanagar	1	3. Nawanagar	1	409,192
4. Bhavnagar	1	4. Bhavnagar	1	500,274
5. Junagadh	1	5. Junagadh	1	545,152
6. Rajpipla	1	6. Rajpipla	1	206,114
Palanpur		Palanpur		264,179
7. Dhrangadhra	1	7. Dhrangadhra	1	88,961
Gondal		Gondal		205,846
8. Porbandar	1	8. Porbandar	1	115,673
Morvi		Morvi		113,023
9. Radhanpur	1	9. Radhanpur	1	70,530
Wankaner		Wankaner		44,259
Palitana		Palitana		62,150
10. Cambay	1	10. Cambay	1	87,761
Dharampur		Dharampur		112,031
Balasinor		Balasinor		52,525
11. Baria	1	11. Baria	1	159,429
Chhota Udepur		Chhota Udepur		144,640
Sant		Sant		83,531
Lunawada		Lunawada		95,162
12. Bansda	1	12. Bansda	1	48,839
Sachin		Sachin		22,107
Jawhar		Jawhar		57,261
Danta		Danta		26,196
13. Dhrol	1	Dhrol		27,639
Limbdi		Limbdi		40,088
Wadhwan		Wadhwan		42,602
Rajkot		Rajkot		75,540
		DIVISION XIII		
1. Kolhapur	2	1. Kolhapur	1	957,137
2. Sangli	1	2. Sangli	1	258,442
Savantvadi		Savantvadi		230,589
3. Janjira	1	3. Janjira	1	110,379
Mudhol		Mudhol		62,832
Bhor		Bhor		141,546
4. Jamkhandi	1	4. Jamkhandi	1	114,270
Miraj (Senior)		Miraj (Senior)		93,938
Miraj (Junior)		Miraj (Junior)		40,684
Kurundwad (Senior)		Kurundwad (Senior)		44,204
Kurundwad (Junior)		Kurundwad (Junior)		39,583
5. Akalkot	1	5. Akalkot	1	92,605
Phaltan		Phaltan		58,761
Jath		Jath		91,099
Aundh		Aundh		76,507
Ramdurg		Ramdurg		35,454

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Federal Assembly	(5) Population
		DIVISION XIV		
1. Patiala	2	1. Patiala	2	1,625,520
2. Bahawalpur	2	2. Bahawalpur	1	984,612
3. Khairpur	1	3. Khairpur	1	227,183
4. Kapurthala	1	4. Kapurthala	1	316,757
5. Jind	1	5. Jind	1	324,676
6. Nabha	1	6. Nabha	1	287,574
		7. Tehri-Garhwal	1	349,573
7. Mandi		8. Mandi		207,465
Bilaspur	1	Bilaspur	1	100,994
Suket		Suket		58,408
8. Tehri-Garhwal				
Sirmur	1	9. Sirmur	1	148,568
Chamba		Chamba		146,870
9. Faridkot		10. Faridkot		164,364
Malerkotla	1	Malerkotla	1	83,072
Loharu		Loharu		23,338
		DIVISION XV		
1. Cooch Behar	1	1. Cooch Behar	1	590,886
2. Tripura	1	2. Tripura	1	382,450
Manipur		3. Manipur	1	445,606
		DIVISION XVI		
1. Mayurbhanj	1	1. Mayurbhanj	1	889,603
Sonepur		2. Sonepur	1	237,920
2. Patna	1	3. Patna	1	566,924
Kalahandi		4. Kalahandi	1	513,716
3. Keonjhar		5. Keonjhar	1	460,609
Dhenkanal		6. Gangpur	1	356,674
Nayagarh	1	7. Bastar	1	524,721
Talcher		8. Surguja	1	501,939
Nilgiri				
4. Gangpur		9. Dhenkanal		284,326
Bamra		Nayagarh		142,406
Seraikela	1	Seraikela		143,525
Baud		Baud		135,248
Bonai		Talcher	3	69,702
5. Bastar		Bonai		80,186
Surguja	1	Nilgiri		68,594
Raigarh		Bamra		151,047
Nandgaon				
		10. Raigarh		277,569
6. Khairagarh		Khairagarh		157,400
Jashpur		Jashpur		193,698
Kanker	1	Kanker	3	136,101
Korea		Sarangarh		128,967
Sarangarh		Korea		90,886
		Nandgaon		182,380

(1) States and Groups of States	(2) Number of Seats in Council of State	(3) States and Groups of States	(4) Number of Seats in the Federal Assembly	(5) Population
		Division XVII		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule	5	3,032,197

Total Population of the States in this table: 78,981,912

APPENDIX III

LEGISLATIVE LISTS

List I

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War

Museum, the Victoria Memorial and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trade-marks and merchandise-marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or cooperative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Enquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs:

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

List II

PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all Courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial-grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonisation; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money-lending and money-lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas; but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect to any of the matters in this list.

38. Enquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption;
(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

List III

CONCURRENT LEGISLATIVE LIST

PART I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands,

including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Enquiries and statistics for the purpose of any of the matters in this Part of this list.

25. Fees in respect of any of the matters in this Part of this list, but not including fees taken in any Court.

PART II

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old-age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road in such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Enquiries and statistics for the purpose of any of the matters in this Part of this list.

36. Fees in respect of any of the matters in this Part of this list, but not including fees taken in any Court.

APPENDIX IV

THE GOVERNMENT OF INDIA (EXCLUDED AND PARTIALLY EXCLUDED AREAS) ORDER, 1936, No. 166

At the Court of Buckingham Palace, the 3rd day of March, 1936.

Present,

The King's Most Excellent Majesty in Council.

WHEREAS by subsection (1) of section ninety-one of the Government of India Act, 1935 (hereafter in this Order referred to as "the Act"), His Majesty in Council is empowered to declare what areas are to be excluded areas and partially excluded areas within the meaning of the Act:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased by and with the advice of his Privy Council to Order, and it is hereby ordered as follows:—

1. This Order may be cited as "The Government of India (Excluded and Partially Excluded Areas) Order, 1936".

2. The areas specified in Part I of the Schedule to this Order shall be the excluded areas, and the areas specified in Part II of that Schedule the partially excluded areas, within the meaning of the Act.

3. Any reference in the said Schedule to any District, administrative area or estate shall be construed as a reference to that District, area or estate as existing on the first day of January, nineteen hundred and thirty-six.

M. P. A. Hankey

SCHEDULE

PART I—EXCLUDED AREAS

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL

The Chittagong Hill Tracts.

THE PUNJAB

Spiti and Lahaul in the Kangra District.

ASSAM

The North East Frontier (Sadiya, Balipara and Lakhimpur) Tracts.
The Naga Hills District.
The Lushai Hills District.
The North Cachar Hills Subdivision of the Cachar District.

THE NORTH WEST FRONTIER PROVINCE

Upper Tanawal in the Hazara District.

PART II—PARTIALLY EXCLUDED AREAS

MADRAS

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government on India (Constitution of Orissa) Order, 1936.

BOMBAY

In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal, and the villages belonging to the following Mehwassi Chiefs, namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Petha of the Nasik District.

The Dahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District.

The Dojad Taluk and the Jhalod Mahal of the Broach and Panch Mahals District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardi, Nalitabari, Haluaghat, Durgapur and Kalmakanda police stations of the Mymensingh District.

THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District.
The portion of the Mirzapur District south of the Kaimur range.

BIHAR

The Chota Nagpur Division.
The Santal Parganas District.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partapgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Peudra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ASSAM

The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

The British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment.

ORISSA

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

APPENDIX V

THE GOVERNMENT OF INDIA (COMMENCEMENT AND TRANSITORY PROVISIONS) ORDER, 1936, No. 672

At the Court at Buckingham Palace, the 3rd day of July 1936.

Present,

The King's Most Excellent Majesty in Council.

WHEREAS by section three hundred and twenty of the Government of India Act, 1935 (hereafter in this Order referred to as "the new Act") it is provided that the provisions of that Act other than those of Part II thereof shall, subject to any express provision to the contrary, come into force on a date to be appointed by His Majesty in Council for the commencement of Part III thereof, but His Majesty in Council is empowered to fix an earlier or later date for the coming into operation, either generally or for particular purposes, of any particular provisions of the Act:

AND WHEREAS by section three hundred and ten of the new Act His Majesty in Council is empowered, for the purpose of facilitating the transition to the provisions of the new Act from the provisions of the Government of India Act (hereafter in this Order referred to as "the old Act"), to direct that the new Act and any provisions of the old Act still in force shall, during a limited period, have effect subject to adaptations and modifications, to make with respect to a limited period temporary provision for ensuring that during and after the transition there are available to all Governments in India sufficient revenues to enable the business of those Governments to be carried on, and to make other temporary provisions for the purposes of removing any difficulties arising in relation to the transition.

AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the new Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Government of India (Commencement and Transitory Provisions) Order, 1936".

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3.—(1) The provisions of the new Act, other than those of Part II thereof and other than those referred to in the next succeeding subparagraph, shall, subject to the provisions of that Act and of this and any other Order in Council made thereunder, come into force on the first day of April, nineteen hundred and thirty-seven, and accordingly that date is the date referred to in that Act as the date of the commencement of Part III thereof.

(2) The provisions of Part VIII of the new Act, of Chapter I of Part IX of that Act, and of the Eighth Schedule to that Act, shall come into force on such dates as His Majesty in Council may hereafter appoint, and section two hundred and thirty-two of that Act shall not come into force until the establishment of the Federation.

(3) In this paragraph the reference to Part II of the new Act shall be deemed to include a reference to the First and Second Schedules thereto, and to so much of the Third Schedule thereto as relates to the Governor-General.

4.—(1) So far as may be necessary for the purpose of enabling the members of all the Provincial Legislatures to be duly chosen in time for those Legislatures to be ready to meet by the commencement of Part III of the new Act—

(a) the provisions of Parts III and XII of, and of the Fifth and Sixth Schedules to, the new Act shall (so far as those provisions are not already in force) come into force on the date of the making of this Order; and

(b) any Orders in Council or rules made under the new Act with respect to those Legislatures, whether before or after the making of this Order, shall come, or, as the case may be, be deemed to have come, into operation at the date of the making of the Orders or Rules in question, and shall authorise or, as the case may be, be deemed to have authorised the giving of any notice or direction and the taking of any other step given or taken in anticipation of the making or coming into force of the Orders or Rules in question.

(2) References in subsection (2) of section sixty-eight of the new Act to the Federal Legislature shall during the period before the commencement of Part III of that Act (as well as during the period in which Part XIII of that Act is in force) be construed as references to the Indian Legislature.

(3) For the avoidance of doubt it is hereby declared that a person who has been chosen to be a member of the Legislative Assembly of Bengal or of the Legislative Assembly of Bihar may, before the commencement

of Part III of the new Act, take part in an election to choose members of the Legislative Council of the Province notwithstanding that he has not taken his seat or taken the oath prescribed by section sixty-seven of the new Act.

5.—(1) The Governor of each Province may in his discretion from time to time authorise such expenditure from the revenues of the Province as he deems necessary to enable the business of the Provincial Government to be carried on between the commencement of Part III of the new Act and the date on which a schedule of authorised expenditure is authenticated in accordance with the provisions of section eighty of the new Act, or until the expiration of six months from the commencement of Part III of the new Act, whichever first occurs:

Provided that, except with the consent of the Governor-General in his discretion, the expenditure so authorised shall not exceed one-half of the total expenditure from the revenues of the Province in the previous financial year as shown in the revised estimates for that year.

(2) The expenditure authorised under the preceding sub-paragraph shall be included under the appropriate heads in the first estimates of expenditure laid before the Provincial Legislature under section seventy-eight of the new Act, and the provisions of that section and of sections seventy-nine and eighty of that Act shall apply in relation thereto:

Provided that any expenditure so authorised shall, so far as regards moneys paid and liabilities incurred before the date on which a schedule of authorised expenditure is authenticated in accordance with the provisions of the said section eighty, be deemed for all purposes of the new Act to have been duly authorised notwithstanding that it may not be included in the Schedule so authenticated.

(3) The following provisions of this subparagraph shall apply in relation to any expenditure incurred from the revenues of a Province in respect of a period before the commencement of Part III of the new Act in excess of the expenditure authorised in respect of that period under the relevant provisions of the old Act—

(a) the Governor of the Province may in his discretion at any time before the expiration of six months from the commencement of Part III of the new Act declare any such expenditure to have been duly authorised; and

(b) in so far as no such declaration has been made, the provisions of section eighty-one of the new Act (which relates to supplementary statements of expenditure) shall apply in relation to any such expenditure as they apply in relation to expenditure in respect of financial years after the commencement of the said Part III.

6. The Governor of each Province in his discretion may by public notification continue for a period not exceeding twelve months from the commencement of Part III of the new Act any taxation which was being

levied for the purpose of the Province and would otherwise expire, without prejudice, however, to the powers of the Provincial Legislature as to the imposition and remission of taxation.

7. Before the first general elections are held to choose the members of the Legislative Assembly of any Province, the Governor shall prorogue the existing Legislative Council, if any, of that Province until the first day of April, nineteen hundred and thirty-seven, and on the commencement of Part III of the new Act the Council shall automatically be dissolved.

The reference in this paragraph to elections held to choose members of a Legislative Assembly does not include a reference to primary elections held to choose candidates for seats in that Assembly.

8. On the commencement of Part III of the new Act, the members of the Council of State and the Legislative Assembly of the Indian Legislature who have been elected or nominated to represent Burma or Burma constituencies shall vacate their seats.

9.—(1) Acts of the Indian Legislature made before the commencement of Part III of the new Act (including Acts made under section sixty-seven B of the old Act) may, notwithstanding the repeal of the old Act and notwithstanding anything in section two hundred and ninety-two of the new Act, be validly made so as first to come into force at, or at any time after, the commencement of Part III of the new Act, but any Act which is valid only by virtue of this paragraph shall except as respects things done or omitted to be done before its expiration cease to have effect on the expiration of twelve months from the commencement of Part III of the new Act:

Provided that—

(a) any such Act may be continued, repealed or amended by any Legislature or authority having for the time being power to legislate in relation to the subject-matter of the Act;

(b) any such Act shall have effect as part of the law of British India, but not as part of the law of Burma;

(c) if and in so far as any such Act is inconsistent with the new Act, or any Order in Council made thereunder (whether made before or after the Act of the Indian Legislature) the new Act, or the Order in Council, as the case may be, shall prevail.

(2) This paragraph shall apply in relation to regulations and ordinances made under sections seventy-one and seventy-two of the old Act as it applies in relation to Acts of the Indian Legislature.

10. Where any functions of a Local Government under any existing Indian law are transferred by or under the new Act to the Federal Government, the Provincial Government shall, nevertheless, continue to perform those functions for such period, if any, not exceeding one year from the commencement of Part III of the new Act, as the Governor-

General may fix, and shall, in the exercise thereof, be subject to the like control by the Governor-General in Council as immediately before the commencement of the said Part III.

11. Section sixteen of the new Act (which authorises the appointment of an Advocate-General for the Federation) and so much of subsection (3) of section thirty-three thereof as declares his salary and allowances to be charged on the revenues of the Federation shall come into force on the commencement of Part III of the new Act.

12. So much of section three hundred and twenty-one of, and of the Tenth Schedule to, the new Act as repeals subsection (2) of section sixty-seven of the old Act down to the words: "the revenues of India" shall not take effect until the establishment of the Federation.

13.—(1) The provisions of this paragraph shall have effect with respect to the period before the commencement of Part III of the new Act.

(2) The accounts for the said period which, but for the commencement of the said Part III would have been audited in India, shall be audited under Part VII of the new Act as if they were accounts of the Governor-General in Council, but the Auditor-General of India shall transmit to the Secretary of State such information as is necessary to enable him properly to perform the duties mentioned in the subsequent provisions of this paragraph.

(3) The accounts for the said period which, but for the commencement of Part III of the new Act, would have been audited in England by the auditor of the accounts of the Secretary of State in Council shall be audited by the Auditor of Indian Home Accounts, who shall have the like powers and perform the same duties in relation thereto as the auditor of the accounts of the Secretary of State in Council would have had if the new Act had not been passed, except that anything to be done by or to the Secretary of State in Council shall be done by or to the Secretary of State; and subsection (3) of section twenty-seven of the old Act and paragraph 9 of the Order in Council of 1920 relating to the duties of the High Commissioner shall apply accordingly.

Subsections (4) and (5) of section one hundred and seventy of the new Act shall not apply in relation to the functions of the Auditor of Indian Home Accounts under this paragraph.

(4) The Secretary of State shall, notwithstanding the repeal of subsections (1) and (2) of section twenty-six of the old Act, lay before both Houses of Parliament the same accounts and estimates as the Secretary of State in Council would under those subsections have been required so to lay.

14.—(1) Anything which under the provisions of the new Act or of any Order or rules made thereunder, is required or authorised to be done by, to or before the Governor of a Province (whether or not the

Governor is to act in his discretion or to exercise his individual judgment) shall, before the commencement of Part III of the new Act, be done by, to or before the Governor in Council or, in the case of Sind or Orissa, the Governor.

(2) The provisions of section two hundred and sixty-one of the new Act, which require the Secretary of State not to exercise certain powers except with the concurrence of his advisers, shall, in relation to any prospective exercise of those powers before the commencement of Part III of the new Act, be deemed to be satisfied if he exercises those powers with the concurrence of the majority of votes at a meeting of the Council of India.

15.—(1) For a period of twelve months from the date of the commencement of Part III of the new Act a person who immediately before the said date was holding an office under the Crown in India shall not be disqualified from continuing to hold that office by reason of the fact that he is not a British subject and that no declaration entitling him to hold the office has been made under section two hundred and sixty-two of the new Act.

(2) Until other provision is made under the new Act, the conditions of service applicable to any person or any class of persons appointed or to be appointed to serve His Majesty in a civil capacity in India shall be the same as were applicable to that person or, as the case may be, to persons of that class immediately before the commencement of Part III of the new Act.

16. The provisions of this Order shall be in addition to, and not in derogation of, the provisions of section thirty-seven of the Interpretation Act, 1889.

APPENDIX VI

THE GOVERNMENT OF INDIA (DISTRIBUTION OF REVENUES) ORDER, 1936, No. 676

At the Court at Buckingham Palace, the 3rd day of July 1936.

Present,

The King's Most Excellent Majesty in Council.

WHEREAS by subsection (1) of section one hundred and thirty-eight of the Government of India Act, 1935 (hereafter in this order referred to as "the Act") it is provided that taxes on income other than agricultural income shall be levied and collected by the Federation, but that (subject to the provisions of the said subsection with respect to surcharges for Federal purposes) a percentage to be prescribed by His Majesty in Council of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed by His Majesty in Council:

AND WHEREAS by subsection (2) of the said section one hundred and thirty-eight the Federation is, notwithstanding anything in subsection (1) of that section, authorised to retain out of the moneys assigned by the said subsection (1) to Provinces and States—

(a) in each year of a period to be prescribed by His Majesty in Council such sum as may be so prescribed;
(b) in each year of a further period to be so prescribed a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction:

AND WHEREAS by subsection (2) of section one hundred and forty of the Act it is provided that one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein:

AND WHEREAS by section one hundred and forty-two of the Act it is provided that such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance:

AND WHEREAS by virtue of the provisions of Part XIII of the Act references in the subsections and sections aforesaid to the Federation are, as respects the period elapsing between the commencement of Part III of the Act and the establishment of the Federation, to be construed as references to the Governor-General in Council:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:

Introductory

1. This Order may be cited as "The Government of India (Distribution of Revenues) Order, 1936".

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. As respects the period elapsing between the commencement of Part III of the Act and the establishment of the Federation, references in this Order to the Federation shall be construed as references to the Governor-General in Council.

4. Any reference in this Order to a year shall be construed as a reference to a period of twelve months beginning on the first day of April.

Taxes on Income

5. The percentage which under subsection (1) of section one hundred and thirty-eight of the Act is to be prescribed by His Majesty in Council shall be fifty per cent, and the sums falling to be distributed under that subsection in any year among the Provinces shall be distributed as follows:

Madras	15 per cent
Bombay	20 ,,
Bengal	20 ,,
The United Provinces . . .	15 ,,
The Punjab	8 ,,
Bihar	10 ,,

The Central Provinces and Berar .	5 per cent
Assam	2 „
The North West Frontier Province .	1 „
Orissa	2 „
Sind	2 „

6.—(1) The first of the periods to be prescribed by His Majesty in Council under subsection (2) of the said section one hundred and thirty-eight shall be five years from the commencement of Part III of the Act, and the sum to be retained by the Federation under that subsection shall, in each of those years, be either the whole of the moneys assigned by subsection (1) of the said section to Provinces and States, or such part thereof as will together with—

(a) the Federation's share of the divisible net proceeds of the taxes on income for that year; and

(b) the sum, if any, to be brought into account by the Federation under sub-paragraph (3) of this paragraph, amount to thirteen crores of rupees, whichever is the less.

(2) In this paragraph, "the divisible net proceeds of the taxes on income" means the net proceeds of the taxes on income to which the said section one hundred and thirty-eight relates, except in so far as they represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, or proceeds of any surcharge for Federal purposes.

(3) The sum, if any, to be brought into account by the Federation in any year for the purposes of sub-paragraph (1) of this paragraph shall be a sum to be ascertained by applying to the accounts of the railways, with such alterations in the accounts as are necessitated by the separation of Burma, the principles laid down in the Resolution of the Legislative Assembly of the twentieth day of September nineteen hundred and twenty-four, and ascertaining in accordance with those principles what sum, if any, would be the net amount payable for that year under clauses (2) and (3) of that Resolution to general revenues out of the net receipt of the railways:

Provided that for the purpose of ascertaining the net amount so payable to general revenues, borrowings from the Depreciation Fund before the commencement of Part III of the Act shall be deemed not to be repayable, and arrears of contributions to general revenues for any year before the commencement of the said Part III shall be deemed not to be payable.

7. The second period to be prescribed by His Majesty in Council under subsection (2) of the said section one hundred and thirty-eight shall be five years from the expiration of the first period prescribed thereunder.

Jute Export Duty

8. The proportion of the net proceeds in each year of any export duty on jute or jute products which under subsection (2) of section one hundred and forty of the Act is to be assigned to the Provinces or Federated States in which jute is grown shall be sixty-two and one-half per cent.

Grants-in-aid to certain Provinces

9. There shall be charged on the revenues of the Federation as grants-in-aid of the revenues of the Provinces mentioned in the Schedule to this Order the sums specified in that Schedule in relation to those Provinces respectively, in each of the years so specified.

SCHEDULE

Grants to certain Provinces

1. The United Provinces:
   25 lakhs of rupees in each year of the first five years from the commencement of Part III of the Act.
2. Assam:
   30 lakhs of rupees in each year.
3. The North West Frontier Province:
   100 lakhs of rupees in each year.
4. Orissa:
   In the first year after the commencement of Part III of the Act, 47 lakhs of rupees; in each of the next four succeeding years, 43 lakhs of rupees; and in every subsequent year, 40 lakhs of rupees.
5. Sind:
   In the first year after the commencement of Part III of the Act, 110 lakhs of rupees; in each of the next nine years, 105 lakhs of rupees; in each of the next twenty years, 80 lakhs of rupees; in each of the next five years, 65 lakhs of rupees; in each of the next five years, 60 lakhs of rupees; and in each of the next five years, 55 lakhs of rupees.

APPENDIX VII

VIEWS OF THE SECRETARY OF STATE FOR INDIA ON THE NIEMEYER REPORT[1]

1. I HAVE now received the views of each of the Provincial Governments and of Your Excellency's Government upon Sir Otto Niemeyer's Report, and having carefully examined these communications, I have reached conclusions which are set forth below. In order that full information of considerations that I have had to weigh may be available, I propose to present to Parliament both views of Governments in India and this reply.

2. I cordially join in the acknowledgments which are due to Sir Otto Niemeyer for undertaking responsible and difficult task that was allotted to him and for manner in which he has discharged it. No problem connected with process of constitutional reform in India has given rise to a greater conflict of views and interests than matter of finance, and it is indeed fortunate that one who combined such exceptional experience and authority with complete detachment from Indian controversies was able to assist in the final stages of its solution. There can be no more striking evidence of formidable complexities of issue upon which he has delivered so clear a judgment than the documents now under review.

3. Sir Otto's task had two aspects. On the one hand he was appointed to conduct an independent investigation of present and prospective budgetary positions of the Government of India and of the Governments of Provinces before final decisions were taken by His Majesty's Government and Parliament as to date for introduction of new Provincial Constitutions. On the other hand he was required to make recommendations for completion by Order in Council of scheme of financial relations between Centre and Provinces embodied in Government of India Act, 1935, and for other adjustments ancillary to that scheme. The matters remaining to be determined by Order in Council were the allocation between Centre and Provinces of proceeds of income tax and jute export duty and prescription of grants-in-aid of revenues of such Provinces as were found to require assistance in this form. The two aspects of enquiry are connected by the objective, inherent inconstitutional plan, of equipping Provinces with at least a sufficient minimum of resources at the outset, and of providing them with further resources in future, for questions at once arise both of the ability of the Central Government to surrender a part of its present resources and of the manner in which the sums available should be distributed among the Provinces.

[1] As published in India.

4. Sir Otto's conclusions upon the general question of adequacy of financial resources is "that the budgetary prospects of India, given prudent management of her finances, justify the view that adequate arrangements can be made, step by step, to meet the financial implications of the new constitution" (paragraph No. 8), and after making recommendations to meet the immediate needs of Provinces, he adds specifically, "From the financial point of view, I conclude that His Majesty's Government may safely propose to Parliament that Part III of the Government of India Act, 1935, should be brought into operation a year hence" (paragraph No. 18). These conclusions have been reached after an expert and exhaustive examination of the position in consultation with the financial authorities of each of the Provinces and of the Government of India, and must accordingly command respect.

It was perhaps inevitable that so long as a final decision had not been pronounced upon the extent of benefit that each Province might expect to receive, the comments of the Provincial Governments should, generally speaking, have been designed mainly to emphasise their individual difficulties and natural desires for greater resources. In any case, it was scarcely to be expected that, where aspirations considerably outrun financial possibilities and expectations have risen high, and where the effects of set-back that accompanied depression are still keenly felt, the necessarily limited proposals now under consideration would receive from this quarter an unqualified welcome. I fully realise indeed that the financial administration of all Provinces will continue to demand great caution and that the budgetary problems of some Provinces will present difficulties.

I see no reason, however, to believe that those problems need prove insoluble, and I find confirmation for this view not only in Sir Otto Niemeyer's judgment, but also in the fact that no Provincial Government makes any suggestion that the introduction of provincial autonomy should be delayed on financial grounds.

On the other hand, the problem of the Government of India in finding some five crores partly to assist the Provinces and partly in consequence of separation of Burma, demands consideration. Sir Otto Niemeyer was far from ignoring implications of this problem, which are further emphasised by the Government of India. It is clear that the Central Government no less than the Provincial Governments will have to direct its financial policy with special care, but I do not understand that the Government of India anticipate insuperable difficulties and I share this view.

5. In considering this question it is well, I think, to appreciate extent to which such practical difficulties as remain to be overcome are inherent in existing situation independently of prospect of constitutional reform. The anxiety of the Provinces for a more liberal allotment of resources has been continuously manifested over a long period. Moreover, the problem of chronic deficit Provinces could not much longer have been left

unsolved. These are the major factors in the situation and would have to be faced even if no change in the existing form of government was contemplated. Beside them the cost of such changes as enlarged electorates and Legislatures which are connected with the new Constitution is relatively insignificant.

It is of course clear that the solution of all these problems might have been simpler had they been under consideration in more propitious economic circumstances. Unless however a completely unforeseeable setback occurs, the position will evidently be markedly better than could have been anticipated at the time when the framework of the new Constitution was under discussion. It will be recalled that the Joint Committee gave special attention to the financial background of reforms and concluded that Parliament would at appropriate time require an assurance from His Majesty's Government that new Constitution could be inaugurated without thereby aggravating financial difficulties to a dangerous extent. In my view the assurance that may now be given can be framed in appreciably more positive and hopeful terms.

After full consideration I entirely accept Sir Otto Niemeyer's conclusions and I had no hesitation in proposing with concurrence of Your Excellency's Government that April 1, 1937, should be appointed as the date for the commencement of provincial autonomy. A draft Order in Council for this purpose (upon technical details which the Government of India and the Provincial Governments have been separately consulted) will shortly be submitted to Parliament.

6. In regard to the second aspect of Sir Otto Niemeyer's Enquiry it is evident that the past history of the discussion of financial relations between the Centre and the Provinces afforded no good reason to hope that his recommendations would be immediately acceptable to all parties concerned. As Joint Committee pointed out, the problem of allocation of resources in a Federal system has everywhere proved singularly impracticable, for the conflict of interest that arises is practically incapable of complete resolution. The assessment of relative financial need of Centre and of Provinces collectively is a sufficiently difficult task, but other facet of problem, the adjudication of rival claims of the Provinces, gives rise to issues of even greater delicacy. I share Government of India's view that in both respects Sir Otto's Report must be regarded as in nature of a quasi-arbitral award and it is accordingly clear that such a nicely balanced scheme could not properly be disturbed except for strongest reasons. I have examined recommendations closely on this basis. So far as concerns the aggregate assistance to be afforded to Provinces, I am not prepared to dissent from the Government of India's view that it is out of the question at present moment for the Central Government to undertake greater commitments immediate or prospective than Sir Otto has recommended. In these circumstances it is of course clear that any material alteration in treat-

ment accorded to particular Provinces can be made only at expense of other Provinces. How extensive is the field of controversy to which this would lead is readily apparent from conflicting views of the Provincial Governments that are before me. Each Province is inevitably convinced of the strength of its own claims and is bound to experience difficulty in appreciating significance of its case relatively to circumstances of other Provinces. It cannot be overlooked that Sir Otto Niemeyer has brought an independent judgment to bear on this subject and that he has had an exceptional opportunity of appreciating problem as a whole. It is my considered view that he has achieved as equitable a settlement between the various contestants as case allows. I propose accordingly to accept his recommendations as a whole.

7. Before accepting recommendations as not only equitable but practicable, I have paid attention to the special problems that are mentioned by Government of India.

As regards financial position of railways, I note with satisfaction that Government of India have matter actively under consideration and your Excellency's Government may count on my support in any measure that may be necessary for the improvement of position.

I note the Government of India's view regarding customs revenue, which is a matter that will undoubtedly call for most careful consideration in the near future.

The question of retaining surcharge on income tax is, as the Government of India point out, one of some difficulty, and although it is only one aspect of general budgetary problem which will arise from time to time, I feel bound to say at once with reference to their observations on the subject that if scheme of finance upon which successful operation of provincial autonomy depends is found to necessitate continuance for some time longer of this burden (either in its present or in any equivalent form), I shall accord my full support to the Government of India.

I agree that in any case there is bound to be some uncertainty whether programme for transfer of income tax to Provinces can be fully realised, and in this connection I think it well to associate myself with warning given by Sir Otto Niemeyer in paragraph 32 of his Report.

While every effort will be made so far as I am concerned, and also I have no doubt by Government of India, to fulfil hopes now extended to Provinces, the scheme cannot be assumed by them to represent a final commitment. At the same time with reference to Government of India's observations as regards provincial percentage I am bound to emphasise importance that I attach to securing maximum possible ultimate distribution to Provinces, for which reason I welcome both Sir Otto's proposal and Government of India's view, which I share, that there is fair reason to believe in its feasibility. It is relevant to remember that a mistake in fixing percentage unduly low cannot be rectified, since percentage originally

prescribed is incapable of increase by a subsequent Order in Council. Against any mistake in contrary direction however there are safeguards both of Governor-General's delaying power, to which attention has been drawn by Sir Otto and Government of India, and in last resort a possible reduction in percentage by an amending Order.

8. In view of my general conclusions already indicated it would serve no good purpose to attempt a detailed commentary on views submitted by each individual province. There are, however, certain specific points upon which brief comment is unavoidable; and in the first place I wish to express concurrence in Government of India's observations in connection with representations of Assam, Sind, Bihar and Bengal. As regards Bengal I would add that it cannot in my opinion properly be assumed that power in respect of jute export duty placed by Government of India Act in the Central Legislature will not be exercised with due regard to economic interests of that Province. On such an assumption applied throughout field of Central Legislation which of necessity includes subjects that affect certain units more than others the Federal idea would be practically unworkable. In so far, however, as there may be a case for reducing sooner or later the rate of jute export duty, I think it necessary to say now that if on account of such a reduction the value to growing Provinces of their percentages were materially reduced it would be necessary to consider whether in the circumstances those Provinces required additional assistance either in form of a change in jute duty percentage or otherwise.

I appreciate the practical problems that confront the Government of the United Provinces. I have, however, not understood that Sir Otto Niemeyer's recommendation was related to precise requirements of each particular year and I am unable to accept suggestion that in aggregate it need prove inadequate. Having regard to the circumstances of United Provinces and to the special problems that the Central Budget will present in the first year or two it appears to me not unreasonable that the beneficiary should accept assistance in even amounts and make budgetary dispositions accordingly.

While I sympathise with much that the Punjab Government says, I cannot refrain from observing that case of that Province relatively to others, particularly Madras and Bombay, appears to have been somewhat exaggerated. Sir Otto Niemeyer has clearly had to consider cases of those Provinces after allowing for separation of Orissa and Sind and I am not prepared to dispute equity of his conclusions. Moreover, from practical point of view benefits of creation of Sind and Orissa have been largely absorbed into budgets of parent Provinces this year, and though they will of course permanently strengthen position of those Provinces, they will not represent additional free resources at disposal of the new Ministries. Again, such benefits as Madras and Bombay derive from decentralisation

and consolidation scheme is, as Government of India point out, temporary, while on the other hand it may be noted that as part of debt scheme the Punjab is left with a large block of debt on exceptionally favourable terms.

I sympathise with the natural disappointment of the Punjab Government that that Province alone of Provinces of India should receive no immediate assistance, except to a trifling degree through debt scheme. But I am not satisfied that there are sufficient grounds for giving any special relief to that Province which Sir Otto Niemeyer has not recommended. The Central resources, especially at outset, are not such that assistance can be given except when the need is imperative. I have no doubt that a Province so well endowed with natural resources, and with so high a tradition of efficient administration as Punjab, will in fact without assistance be much more favourably situated than many of the other Provinces, even after allowing for help which latter will receive. The fact that one or two other Provinces, whose economic strength is perhaps comparable with that of Punjab, happen to receive relief owing to their territorial reorganisations and debt scheme cannot afford justification for grant of some equivalent benefit to Punjab. It has also to be remembered that additional resources will become available to the new Punjab Government when income tax begins to be distributed. I note that the Punjab Government consider that they will be at some small financial disadvantage on the introduction of provincial autonomy owing to an expected loss in connection with the supply of liquor by the Province to other administrations. Arrangements covering supply of excise liquor by one Province to another will have to be reviewed in the light of new constitutional position, and I consider that points raised by Punjab Government in this connection will require further examination.

9. I am submitting to Parliament a draft Distribution of Revenues Order which deals with income tax, the jute export duty and grants-in-aid to certain Provinces in strict accordance with Sir Otto Niemeyer's recommendations. The technical points in draft Order have been separately discussed with Government of India, but there are certain fundamental assumptions that I must set forth on present occasion: (a) The calculation to which section 138 (1) of Government of India Act gives rise involves certain assumptions as to interpretation of that section and Sir Otto Niemeyer has recorded assumptions that he has made in annexed letter. The Order has been drafted upon the basis of these assumptions, and as allocation of appreciable sums is involved it is necessary that I should make this clear. (b) It has always been assumed that "corporation tax" (which is allocated by Act as a Federal source of revenue) would mean a tax of nature of existing super-tax on companies and definition in section 311 (2) of Act was intended to have this result. I understand, however, that doubt has arisen whether definition is entirely satisfactory.

If such doubt is substantiated hereafter, it may be necessary to ask Parliament to rectify position. (c) Sir Otto has recommended that for the purpose of formula which governs the allocation of income tax in first five-years period the computation of railway contributions to general revenues should be made on basis provided by present railway convention which was formulated in a resolution passed by Legislative Assembly on September 14, 1924. In accepting this recommendation I agree that Government of India method of application of that resolution to present purpose should, in respect of treatment of loans from depreciation fund, the treatment of arrears of contribution to general revenues (which are not specifically mentioned but are in *pari materia*) and improvement of accounting procedure, be on lines suggested in paragraph 9 of their views. The relevant provisions of the draft Order in Council are intended to give effect to above. (d) The provisions of draft Order in respect of the North West Frontier Province grant-in-aid do not bear on the face of them qualifications that case of this Province is to be reconsidered in five years' time, which was what Sir Otto recommended. It would in fact be inconvenient to make such provision in Order, but I wish to make it clear that intention is to reconsider matter at the end of five years. In this connection I have noted the concluding comments on views of this Province, and I think it desirable to state that so far as I am concerned there is no question of prejudging at present time any decision that may have to be taken in the light of circumstances of five years hence. (e) The provisions of Sind assume that barrage debt funding scheme will be on lines recommended by Sir Otto Niemeyer, and measures to this end are in contemplation.

10. The scope of the draft Order in Council does not extend to the decentralisation of the balances and the cancellation and consolidation of debt referred to in paragraphs 19 to 21 and Appendix III of Report. These are matters which will fall to be dealt with immediately before commencement of provincial autonomy under the existing statutory powers (subject to certain amendments of Devolution Rules). It is clear in any event that grant of the specified assistance to certain Provinces by cancellation of debt is an essential part of Sir Otto Niemeyer's scheme, and I shall assure Parliament that necessary action in this regard will be taken.

In addition, however, I entirely agree with Government of India that scheme for decentralisation of balances and consolidation of debt must be regarded as an integral part of the whole plan, and on this basis I have decided to accept the scheme. The detailed arrangements for its execution will be separately discussed.

APPENDIX VIII

LETTER FROM SIR OTTO NIEMEYER, G.B.E., K.C.B., TO THE UNDER SECRETARY OF STATE FOR INDIA, LONDON, DATED APRIL 6, 1936[1]

In the course of my consideration of the problems arising under section 138 of the Government of India Act, 1935, it has been necessary to make estimates of the amounts which, in various circumstances, would be assignable to the Centre and the Provinces respectively. This process involves certain assumptions as to the precise interpretation of these provisions; and since my recommendations might have been different had I not made the particular assumptions which I did in fact make, it is desirable that I should place them on record.

(1) Although the Act treats "corporation tax" and "taxes on income" as distinct taxes, the present super-tax on companies ("corporation tax" under the Act) is in practice levied under the same law and by the same administration as any other form of income tax. It is obviously convenient that it should be: but as a result there are certain difficulties in determining what amount of the produce of the various forms of income tax is in fact "corporation tax" and what amount is "taxes on income" within the meaning of section 138.

(a) In the first place, when refunds on account of double income tax are given to companies, relief is calculated upon the basis of the total tax suffered, both income tax and super-tax. The amount of such relief in a recent year was nearly Rs. 90 lakhs. Obviously the question whether so large a sum is to be regarded as falling entirely upon the wholly Federal head of "corporation tax", or entirely upon the heads which are divisible with the Provinces, or partly on the one and partly on the others, is of considerable importance. A fair workable basis of calculation is to divide the double tax refunds granted to companies in any year between "corporation tax" and "taxes on income" in the proportion that gross collections of "corporation tax" less other refunds granted in that year bear to collections of company income tax less other refunds (including section 48) granted in that year. I have myself adopted this formula and I think it should be followed in future practice.

(b) Since a common administration is occupied with all forms of

[1] As published in India.

income tax, costs of collection are not readily divisible between "corporation tax" and the other heads. The amount at stake is comparatively small; and I think it would be waste to attempt an elaborate enquiry (which would have to be periodically renewed) as to the precise time and money spent in collecting "corporation tax". I have in fact divided the cost of collection of all forms of income tax between "corporation tax" and the other heads in the ratio that "corporation tax" as reduced by refunds in accordance with sub-paragraph (a) above bears to the other heads of tax as similarly reduced; and this practice should similarly be followed in future.

(2) (a) To arrive at the divisible pool it is necessary to deduct from "taxes on income" the proceeds of taxes on Federal emoluments. Collections under this head, less refunds, can apparently be readily ascertained from the income tax returns; but again, in determining the amount to be retained by the Centre under this head, regard must be paid to cost of collection. I have again assumed that the cost should be proportionate to the yield, after deducting refunds.

(b) A further deduction has to be made on account of "proceeds attributable to Chief Commissioners' Provinces". The Act does not define the meaning of "attributable"; but it appears to me reasonable (and the first paragraph of section 57 of the Introduction to the White Paper suggests that it was intended) that the attribution should be determined by factors similar to those which determine the distribution of the Provincial share among the various Governors' Provinces. Having considered the matter on this basis, I recommend that the Centre should retain, in respect of Chief Commissioners' Provinces, 1 per cent of the net tax remaining after the elimination of "corporation tax" and tax on Federal emoluments. The divisible pool of which the Provinces will receive 50 per cent according to their respective percentages, will be what remains thereafter.

(3) I should not regard these questions of principle as fitting subjects for a decision by the Auditor-General under section 144 (1) of the Act. I think they are proper matters for administrative decision in the ordinary course of administering the Act, and I should personally be disposed to leave them at that, unless there is any serious likelihood that such administrative decision might be challenged.

But I understand that the Government of India are dissatisfied with the existing definition of "corporation tax" in section 311 (2) of the Act, and contemplate the submission to the Secretaty of State of proposals for its amendment: and it may be that, in view of a conceivable danger under section 204, he may prefer to cover all or some of the above matters also by legislation or by taking power to deal with them by Order in Council.

APPENDIX IX

DRAFT OF INSTRUMENT OF ACCESSION

A DRAFT Instrument of Accession was circulated to the Princes of India and in August 1936 was published in India. The text is as follows:

INSTRUMENT OF ACCESSION of [insert full name and title].

Whereas proposals for the establishment of a Federation of India comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States. And whereas those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom and by the accession of Indian States. And whereas provision for the Constitution of a Federation of India has now been made in the Government of India Act, 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by proclamation declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation. And whereas the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation. Now therefore I (insert full name and title) ruler of (insert name of State), in the exercise of my sovereignty in and over my said State, for the purpose of cooperating in the furtherance of the interests and welfare of India by uniting in a Federation under the Crown by the name of the Federation of India with the Provinces, called Governors' Provinces, and with the Provinces called Chief Commissioners' Provinces and with the Rulers of other Indian States, do hereby execute this my Instrument of Accession, and

1. I hereby declare that subject to His Majesty's acceptance of this instrument I accede to the Federation of India as established under the Government of India Act, 1935 (hereinafter referred to as "the Act") with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal Authority established for the purposes of the Federation shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to the State of (hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the First Schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State, and in this Instrument and in the said First Schedule I specify the limitations to which the power of the Federal Legislature to make laws for this State, and the exercise of the executive authority of the Federation in this State, are respectively to be subject. Whereunder the First Schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matter specified in that schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with and subject to that limitation.

4. The particulars to enable due effect to be given to the provisions of sections 147 and 149 are set forth in the Second Schedule hereto.

5. References in this Instrument to Laws of the Federal Legislature include references to Ordinances promulgated, Acts enacted and laws made by the Governor-General of India under sections 42 to 45 of the Act inclusive.

6. Nothing in this Instrument affects the continuance of my sovereignty in and over this State or, save as provided by this Instrument or by any Law of the Federal Legislature made in accordance with the terms thereof, the exercise of any of my powers, authority and rights, in and over this State.

7. Nothing in this Instrument shall be construed as authorising Parliament to legislate for or exercise jurisdiction over this State or its Ruler in any respect: provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the Second Schedule thereto, and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment; but no such amendment shall, unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which, by virtue of this Instrument, are exercisable by His Majesty or any Federal authority in relation to this State.

8. The Schedules hereto annexed, shall form an integral part of this Instrument.

9. This Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before the . . . day of . . . nineteen hundred and . . . this Instrument shall on that day, become null and void for all purposes whatsoever.

10. I hereby declare that I execute this Instrument for myself, my

heirs and successors, and that accordingly any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors.

(Then follows the attestation to be drawn with all due formality appropriate to the declaration of a Ruler.)

ADDITIONAL PARAGRAPHS FOR INSERTION IN PROPER CASES

A. Whereas I am desirous that functions in relation to the administration in this State of the laws of the Federal Legislature which apply therein shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor-General of India and are set out in the .... Schedule hereto: now therefore I hereby declare that I accede to the Federation with the assurance that the said agreement will be executed and the said agreement when executed shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

B. The provisions contained in Part VI of the Act with respect to interference with water supplies, being sections 130 to 133 thereof inclusive, are not to apply in relation to this State.

C. Whereas notice has been given to me of His Majesty's intention to declare, in signifying his acceptance of this, my Instrument of Accession, that the following areas .... are areas to which it is expedient that the provisions of subsection (1) of section 294 of the Act should apply: now therefore I hereby declare that this Instrument is conditional upon His Majesty making such declaration.

APPENDIX X

DRAFT INSTRUMENTS OF INSTRUCTIONS TO THE GOVERNOR-GENERAL AND GOVERNORS

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THE Instruments of Instructions under the provisions of sections 13 and 53 of the Act, are to be approved by both Houses of Parliament. The following draft of the Instrument of Instructions to the Governor-General was presented to Parliament as illustrating the content of the document which the Government had in mind. The draft is based in the main on recommendations of the Joint Select Committee, and also contains some passages and phrases which are contained in the existing Instructions to the Governor-General (Cmd. 4805).

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL

WHEREAS by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor-General of India:

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on   and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the government of India and of Our Federation of India are declared to be vested in the Governor-General as Our Representative:

AND WHEREAS, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from Our Secretary of State, and to the duty of Our Governor-General to give effect to any instructions so received, We are minded to make general provision regarding the manner in which Our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which We have reposed in him:

AND WHEREAS by the said Act it is provided that the draft of any such Instructions to be issued to Our Governor-General shall be laid by Our Secretary of State before both Houses of Parliament:

AND WHEREAS both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to Our Governor-General in the form which hereinafter follows:

NOW, THEREFORE, We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:

A.—Introductory

I. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General according to the provisions of Our Letters Patent constituting the said Office.

II. Our Governor-General for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual, appointing him, to be read and published in the presence of the Chief Justice of India for the time being, or, in his absence, other Judge of the Federal Court.

III. Our said Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor-General, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—In Regard to the Executive Authority of the Federation

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare.

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important

minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI. Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that

policy is essential in the interests of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act, and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of Our Governor-General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions of imports) and indirect discrimination by means of differential treatment of various types of products: and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted and the mutual obligations which arise therefrom.

XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised,[1] whether derived from treaty, grant, usage, sufferance, or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government Our Governor-General shall ensure that amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Federation: and further that no re-appropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

XVIII. Further, it is Our will and pleasure that, in the administration of the Department of Defence, Our Governor-General shall obtain the views of Our Commander-in-Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to Our Secretary of State whenever the Commander-in-Chief may so request on any occasion when Our Governor-General communicates with Our Secretary of State upon them.

XIX. And We desire that, although the financial control of Defence administration must be exercised by the Governor-General at his dis-

[1] The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

cretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

C.—In regard to Relations between the Federation, Provinces and Federated States

XX. Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession:

And whereas in the interest of the harmonious cooperation of the several members of the body politic the said Act has empowered Our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States:

It is Our will and pleasure that Our Governor-General, in the exercise of these powers, should give unbiased consideration as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Governments of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular We require our Governor-General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any

legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of moneys assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation; but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the said Act, it is Our will and pleasure that Our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal law, Our Governor-General, while giving full consideration to

the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those Codes of law through which uniformity of legislation has hitherto been secured.

D.—Matters affecting the Legislature

XXVII. Our Governor-General shall not assent in Our name to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill;

(c) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;

(d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act.

XXVIII. It is further Our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor-General in notifying his assent in Our name to any Act of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar has been given on Our behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam.

XXIX. It is Our will that the power vested by the said Act in Our Governor-General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXX. It is Our will and pleasure that, in choosing representatives of British India for the seats in the Council of State which are to be filled by Our Governor-General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women; and in any nominations made for the purpose of redressing

inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall, so far as may seem to him just, be guided by the proportion of seats allotted to such minority communities among the British India representatives of the Federal Assembly.

E.—General

XXXI. And finally, it is Our will and pleasure that Our Governor-General should so exercise the trust which we have reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among our Dominions.

DRAFT INSTRUMENT OF INSTRUCTIONS TO GOVERNORS

(*Presented to Parliament*, November 1936)

Whereas by Letters Patent bearing date the day of Nineteen hundred and thirty-seven We have made permanent provision for the Office of Governor of :

And Whereas by those Letters Patent and by the Act of Parliament passed on the second day of August, Nineteen hundred and thirty-five and entitled the Government of India Act, 1935 (hereinafter called "the Act"), certain powers, functions and authority for the government of the Province of are declared to be vested in the Governor as Our Representative:

And Whereas, without prejudice to the provision in the Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to *the Act and the said Letters Patent, belong to his Office, and to the* trust which We have reposed in him:

And Whereas a draft of these Instructions has been laid before Parliament in accordance with the provisions of subsection (1) of section fifty-three of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be issued in the terms of these Instructions:

NOW THEREFORE, We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:—

A.—Introductory

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being acting as Governor according to the provisions of the Act.

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of , and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—In regard to the Executive Authority of the Province

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise

of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects

of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIIA. In pursuance of the Agreement made between Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor shall interpret his special responsibility for the protection of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar, he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

(*The foregoing paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only.*)

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order

to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

XVA. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

(*The foregoing paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.*)

C.—Matters affecting the Legislature

XVI. In determining whether he shall in Our name give his assent to, or wthhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:—

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;

(*c*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;

(*d*) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIIA. Our Governor in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar or in notifying Our assent to any such Bill reserved for the signification of Our pleasure shall state that the assent to the Bill in its application to Berar has been given by virtue of the assent of His Exalted Highness the Nizam to the aforesaid Agreement.

(*The foregoing paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.*)

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D.—General

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

APPENDIX

Form of Oath of Allegiance

I, , do swear that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, Emperor of India, His Heirs and Successors, according to law.

So Help me God.

Form of Oath of Office

I, , do swear that I will well and truly serve Our Sovereign, King George the Sixth, Emperor of India, in the Office of , and that I will do right to all manner of people after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

Form of Oath of Secrecy for Ministers

I, , do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in , except as may be required for the due discharge of my duties as such Minister or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion.

So help me God.

APPENDIX XI

REVISION OF INDIAN STATUTES

A FURTHER Draft Order in Council to be submitted to Parliament will provide for the revision of the Indian Statute Book to bring its phraseology and various provisions into conformity with the Government of India Act, 1935. A Special Officer in charge of this work was deputed to London in the autumn of 1936 to assist the Parliamentary draftsmen and officials at the India Office in giving final shape to the alterations.

About 600 Central laws and 1000 Provincial laws have undergone revision with a view to the re-writing authority administering those laws in terms of the new Act. In the majority of cases the authority had to be re-written in view of the fundamental changes brought about in the division of authority by the new Act.

The adaptation of Central laws has to keep in view certain important changes that have been brought about by the Act. For instance, at present the Government of India can order a prisoner of one Province to be lodged in a jail of another Province. In future this will require the concurrence of the provincial Governments concerned. As regards the Motor Vehicles Act a licence under the Act can at present be issued having effect in all provinces. Under the new Act the grant of such licences is a provincial concern.

One difficulty has been surmounted, namely, as to how to define "Government of India" in the statutes which are being adapted. The "Government of India" as it exists to-day, as it will exist when the transitory provisions come into force, and in its final federal form, has all been covered by being described as the "Central Government".

The work of revision of the Statutes will lead to one distinct advantage - it will mean a codification of all laws both Central and Provincial —and these laws will hold the field till such time as any Legislature may choose to amend them.

APPENDIX XII

FAMILY PENSION FUND

DRAFT ORDER AS APPROVED BY BOTH HOUSES OF PARLIAMENT, NOVEMBER 1936

THE GOVERNMENT OF INDIA (FAMILY PENSION FUNDS) ORDER, 1936

At the Court at Buckingham Palace, the day of 1936.

Present,

WHEREAS by section two hundred and seventy-three of the Government of India Act, 1935 (in this Order referred to as "the Act") His Majesty in Council is empowered to provide for the vesting of certain family pension funds in Commissioners and for other matters in connection with those funds:

AND WHEREAS certain other provisions are made by the said section in connection with those funds:

AND WHEREAS by section three hundred and ten of the Act His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act to the provisions of the Act, to direct that the Act shall, during a specified period, have effect subject to adaptations and modifications:

AND WHEREAS difficulties will arise unless certain adaptations and modifications are made in the said section two hundred and seventy-three in relation to the period before the commencement of Part III of the Act:

AND WHEREAS the Public Trustee has consented to accept the trusts created by this Order and to become a Commissioner thereunder accordingly:

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:—

Short Title

1. This Order may be cited as "The Government of India (Family Pension Funds) Order, 1936".

The Funds

2. Not later than the first day of April, nineteen hundred and thirty-seven, two funds shall be formed, the first out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations, and the second out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules.

3. In this Order the expression "the funds" means the Indian Military Widows' and Orphans' Fund, the Superior Services (India) Family Pension Fund, and the two funds directed to be formed by the provisions of the last preceding paragraph.

The Commissioners

4. There shall be a body of Commissioners for each of the funds.

5.—(1) Each of the said bodies shall consist of five Commissioners, of whom one shall be the Public Trustee and four shall be appointed by the Secretary of State.

The Secretary of State shall so exercise his powers under this sub-paragraph as to secure that two of the Commissioners for each fund are persons who are, or have been, subscribers to that fund.

(2) Each of the Commissioners appointed by the Secretary of State shall be appointed for a period of four years, and shall be eligible for reappointment:

Provided that—

(a) in the case of each fund, two of the first four Commissioners appointed by the Secretary of State, to be selected by lot, shall retire after two years, but shall be eligible for reappointment;

(b) any Commissioner appointed by the Secretary of State may at any time, by notice in writing to the Secretary of State, resign his office, and the Secretary of State may terminate the appointment of any such Commissioner if satisfied that that Commissioner is for any reason unfit to perform, or unable properly to perform, the duties of his office.

6.—(1) Each body of Commissioners may act notwithstanding any vacancy in their number.

(2) At any meeting of the Commissioners, three shall be a quorum, and, in the event of a difference of opinion, the decision of the majority of the Commissioners present shall be the decision of the Commissioners.

(3) Notwithstanding anything in the last preceding sub-paragraph the Commissioners may by rules of business provide that a meeting need not be held for the discussion and determination of any matter if after consultation in writing the Commissioners are all agreed as to the decision to be taken.

(4) Any instrument shall be deemed to be validly executed by any of the said bodies of Commissioners if it is signed or sealed, as the case may be, by three or more of the Commissioners, of whom the Public Trustee shall be one; and any instrument signed or sealed on behalf of the Public Trustee in any manner authorised by the Public Trustee Act, 1906, and the rules made thereunder shall be deemed for the purposes of this sub-paragraph to be signed or sealed, as the case may be, by the Public Trustee.

7.—(1) The said bodies of Commissioners shall be known respectively as the Commissioners for the Indian Military Widows' and Orphans' Fund, the Commissioners for the Superior Services (India) Family Pension Fund, the Commissioners for the Indian Military Service Family Pension Fund, and the Commissioners for the Indian Civil Service Family Pension Fund; and investments may be made and moneys held by them in the names respectively assigned to them by this sub-paragraph.

(2) Investments so made and moneys so held shall, on any change in the membership of the Commissioners, devolve to the Commissioners for the time being without transfer or assignment, and any authority or direction given by the Commissioners with respect to dividends, interest or other moneys accruing to the Commissioners shall remain valid notwithstanding any change in their membership.

(3) The production of a notification in the *London Gazette* of the appointment of the Commissioners or of any change in the membership of the Commissioners shall be sufficient evidence thereof.

8.—(1) There shall be paid to a Commissioner appointed by the Secretary of State out of the fund for which that Commissioner acts such remuneration, if any, as may be specified by the Secretary of State at the time of his appointment.

(2) The fees payable to the Public Trustee in respect of any fund shall be paid out of that fund.

9. Any administrative expenses incurred by any of the said bodies of Commissioners shall be paid out of the fund in their hands.

Vesting of the Funds in the Commissioners

10. The balances existing at the end of March, nineteen hundred and thirty-six, in respect of the Indian Military Widows' and Orphans' Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, shall, subject to the provisions of subsection (3) of section two hundred and seventy-three of the Act, be transferred to the appropriate Commissioners before the end of March, nineteen hundred and thirty-nine by such instalments, and with such interest, as the Secretary of State may determine. Any question as to the amount to be transferred under this paragraph to any body of Commissioners shall be decided by the Secretary of State.

11. Any sums paid under the last preceding paragraph before the commencement of Part III of the Act shall be paid out of the revenues of India, any sums paid thereunder after the commencement of Part III of the Act but before the establishment of the Federation shall be paid out of the revenues of the Governor-General in Council, and any sums paid thereunder after the establishment of the Federation shall be paid out of the revenues of the Federation.

12. The Commissioners shall invest so much of the funds respectively in their hands as is available for investment in such securities as they think fit, being either—

(a) securities in which a trustee may invest trust moneys under the powers of section one of the Trustee Act, 1925, as extended by any subsequent enactment; or

(b) the stocks, funds, bonds, mortgages, debentures or securities of any public body incorporated in the United Kingdom by or under any Act of Parliament or of the Parliament of Northern Ireland; or

(c) the bonds, mortgages, debentures, debenture or rent-charge stock of any railway, gas, electric light or power company in the United Kingdom; or

(d) the preference stock or shares of any such gas, electric light or power company which has paid a dividend on its ordinary stock or shares at a rate of not less than three per cent during each of the five years immediately preceding the date of the investment,

and may, as and when they think fit, realise, convert or otherwise deal with any such securities:

Provided that—

(i) the proviso to subsection (1) of section two of the Trustee Act, 1925 (which restricts the purchase by trustees of securities standing at a premium) shall not apply to the Commissioners;

(ii) the Commissioners shall not invest in real securities in the Irish Free State, or in the stock of the Bank of Ireland.

13. Any interest, dividends or other sums received by the Commissioners of any of the funds in respect of any such securities shall form part of that fund.

Functions of Secretary of State

14.—(1) The funds shall in all other respects be administered by the Secretary of State, and all pensions payable out of any of the funds shall be paid by, or by authority of, the Secretary of State, and all contributions to any of the funds received by any person shall be accounted for to the Secretary of State.

(2) For the avoidance of doubt, it is hereby declared that the requirement of this paragraph that the funds shall be administered by the Secretary of State does not exempt the proper officers in India, Burma, Aden or elsewhere from the duty of collecting and accounting for the contributions, and paying the pensions, in the cases and classes of case in which contributions and pensions have heretofore been so collected and paid.

15. The Commissioners shall, as and when requested by the Secretary of State, pay to him out of the funds for which they are respectively responsible such sums as he may certify to be required by him for the purposes of the fund in question.

16. The Secretary of State shall pay over to the appropriate Commissioners all contributions to any of the funds made after the end of March, nineteen hundred and thirty-six:

Provided that nothing in this paragraph shall be construed as preventing the application by, or by authority of, the Secretary of State, and with the consent of the Commissioners, of a part of any such contributions for the purpose of meeting obligations falling to be met out of the fund.

17. Notwithstanding anything in Part X of the Act or in the regulations or rules relating to any of the funds, the Secretary of State having obtained from an actuary a report on any of the funds, may make such alterations in any pensions payable out of that fund as may appear to him after consideration of the report to be reasonably necessary in consequence of the transfer of that fund under this Order, including alterations in pensions granted (whether temporarily or not) before the making of the alteration.

The powers conferred on the Secretary of State by this paragraph shall be in addition to, and not in derogation of, any powers otherwise conferred on him by the said regulations and rules.

18. The fees of an actuary appointed at any time with the approval

of the Secretary of State to make a report to the subscribers to, or beneficiaries under, any fund with respect to the position of that fund may to such extent as the Secretary of State deems proper be paid out of that fund.

Objection to Transfer

19. At any time before the end of March 1937, or before the expiration of such longer period as may in special circumstances be allowed by the Secretary of State in any particular case or class of cases, any of the existing subscribers or beneficiaries may make a written objection to the Secretary of State to the vesting of the fund in which he is interested in the Commissioners.

20. In the case of any existing beneficiary who has not attained the age of twenty-one years or is of unsound mind, objection may be made as aforesaid on his behalf by his parent or guardian, or, as the case may be, by any person who satisfies the Secretary of State that he has by law authority to receive on behalf of the beneficiary any pension payable to him out of the fund:

Provided that where under section three hundred and thirty-five of the Lunacy Act, 1890, or any corresponding enactment in force outside England payments from the Fund are being made to an institution or person having the care of the beneficiary, then, if the Secretary of State is satisfied that there is no person who would apart from this proviso be entitled to make objection on behalf of the beneficiary, objection may be made as aforesaid on behalf of the beneficiary by any person who satisfies the Secretary of State that he contributes towards the expense of maintaining the beneficiary.

21. In the case of any existing subscriber who is of unsound mind, objection may be made as aforesaid on his behalf by any person who satisfies the Secretary of State that he has by law authority to make such an objection on behalf of that subscriber or that he has by law authority to receive on behalf of the subscriber any pension payable to him out of the revenues of India:

Provided that where under section three hundred and thirty-five of the Lunacy Act, 1890, or any corresponding enactment in force outside England payments are being made from the revenues of India to an institution or person having the care of the subscriber, then, if the Secretary of State is satisfied that there is no person who would apart from this proviso be entitled to make objection on behalf of the subscriber, objection may be made as aforesaid on behalf of the subscriber by his wife, or, if he has no wife, by, or, as the case may be, by the guardian of any child of the subscriber who may become entitled to a pension from the Fund, (so, however, that no objection shall be made by, or by the guardian of, any such child without the consent of, or, as

the case may be, of the guardians of, the other children who may become entitled to pensions from the Fund).

22. Where any objection is duly made as aforesaid, subsection (3) of section two hundred and seventy-three of the Act shall have effect as from the first day of April, nineteen hundred and thirty-six, in relation to the interest of the person by whom or on whose behalf the objection is made, and any necessary adjustments shall be made as respects payments made by, to or in connection with, that person on or after that date.

Temporary Adaptations and Modifications of Section 273

23. As respects the period preceding the commencement of Part III of the Act, section two hundred and seventy-three of the Act shall have effect subject to the following adaptations and modifications:—

(a) for the words "the Secretary of State", where they first occur in subsection (1), there shall be substituted the words "the Secretary of State in Council";

(b) any reference in subsection (2) or subsection (3) to the Governor-General shall be construed as a reference to the Secretary of State in Council;

(c) the reference in paragraph (a) of subsection (3) to the revenues of the Federation shall be construed as a reference to the revenues of India;

(d) the reference in paragraph (b) of subsection (3) to the Secretary of State shall be construed as a reference to the Secretary of State in Council.

Miscellaneous

24. This Order shall come into force on the date of the making thereof.

25. The date as from which, under subsection (1) of section two hundred and seventy-three of the Act, pensions payable under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules (being the pensions not heretofore payable out of any specific fund) are, subject to the provisions of subsection (3) of that section, to be payable out of the appropriate fund to be formed for the purposes of this Order and vested in Commissioners, shall be the date of the payment of the last instalment payable under paragraph ten of this Order; but the appropriate fund shall be debited with any payments of any such pension made before that date and after the end of March, nineteen hundred and thirty-six.

26. Anything to be done by or to the Secretary of State under this Order shall, until the commencement of Part III of the Act, be done by or to the Secretary of State in Council.

Interpretation

27. The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament, and subsection (6) of section two hundred and seventy-three of the Act shall apply with respect to this Order as it applies with respect to that section.

28. In this Order, except so far as the context otherwise requires, the expression "contributions" in relation to any of the funds includes references to any donation or fine payable under the rules or regulations relating to that fund, and references to subscribers or contributions to the funds include, in relation to the two funds directed to be formed by this Order, subscribers and contributions under the Indian Military Service Family Pension Regulations or, as the case may be, the Indian Civil Service Family Pension Rules.

29. References in this Order to the Secretary of State shall, as respects the period subsequent to the commencement of Part III of the Act, be construed as references to the Secretary of State acting with the concurrence of his advisers in accordance with the provisions of section two hundred and sixty-one of the Act.

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THE END

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